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Sup. Ct.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 392)

Supreme Court of the United States

OCTOBER TERM, 1945 46

No. 64

AMERICAN POWER & LIGHT COMPANY,
PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

No. 75

ELECTRIC POWER & LIGHT CORPORATION,
PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 16, 1944.

CERTIORARI GRANTED MAY 28, 1945.

Nos. 166 -167

VOLUME I.

Office - Supreme Court, U. S.
FILED
JUN 16 1944
CHARLES ELMORE CROPLEY
CLERK

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1942.

No. 3823.

AMERICAN POWER & LIGHT COMPANY,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

No. 3824.

ELECTRIC POWER & LIGHT CORPORATION *v.* SAME.

PETITIONS FOR REVIEW OF ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION.

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Pages 1 to 392, inclusive.

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FRANK A. REID,
ARTHUR A. BALLENTINE,
for AMERICAN POWER & LIGHT CO., *Petitioner.*

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R. GRAHAM HEINER,
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for ELECTRIC POWER & LIGHT CORPORATION, *Petitioner.*

JOHN F. DAVIS,
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BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK
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TABLE OF CONTENTS.

VOLUME I. Pages 1 to 392, inclusive.

	PAGE
Court (Circuit Court of Appeals) and Title of Case (No. 3823)	1
Petition for Review by American Power & Light Company	1
Appendix A,—Order requiring Dissolution, etc.	12, 650
B,—Order denying Petition to Vacate Order, etc.	12, 677
Petition for Review by Electric Power & Light Corporation (No. 3824)	13
Appendix A,—Order requiring Dissolution, etc.	26, 652
B,—Order denying Petition to Vacate Order, etc.	26, 679
Transcript of Record:	
Document No.	
(1) Notice of and Order for Hearing	27
(4) Application with respect to Notice of and Order for Hearing	57
(5) Memorandum Opinion and Order	64
Transcript of Testimony	67
Offer of Exhibits	73–121
Testimony of James H. Flanagan	122
Stipulations	171
Colloquy	175–198
Offer of Exhibits	199–206
Colloquy	207–229
Offer of Exhibits	229–233
Testimony of Caleb N. Phillips	234
H. L. Aller	264
Colloquy	294

Document No.		Page
(12)	Motion to Dismiss, etc.	299
(14)	Statement by Commission Counsel with respect to Exhibits, etc.	303
(15)	Reply Statement to Statement by Commission Counsel, etc.	328
(19)	Opinion of the Commission, June 30, 1940, and Order	334
(25)	Memorandum Opinion and Order, August 16, 1940	343
(26)	Motion to Dismiss	345
(27)	Amended Answer	353
(79)	Letter, Dec. 5, 1941, Simpson, Thacher & Bartlett and Reid & Priest to Commission	385
(80)	Motion to Consolidate	386

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1942.

No. 3823.

AMERICAN POWER & LIGHT COMPANY,
PETITIONER,
v.
SECURITIES AND EXCHANGE COMMISSION,
RESPONDENT.

PETITION OF AMERICAN POWER & LIGHT COMPANY FOR REVIEW OF ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION.

[FILED IN CIRCUIT COURT OF APPEALS OCTOBER 20, 1942.]

To the United States Circuit Court of Appeals for the First Circuit and the Honorable Judges thereof:

The petition of American Power & Light Company respectfully shows to this Court as follows:

(1) Your petitioner is a corporation organized and existing under the laws of the State of Maine. Its principal corporate office is in the State of Maine and it has at no time qualified to do business as a foreign corporation in any other State.

(2) Your petitioner being aggrieved by certain orders of the Securities and Exchange Commission (hereinafter called the "Commission"), dated August 22, 1942 and August 28, 1942, respectively, files this petition under Section 24(a) of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act") to review said orders

and set them aside in whole. A copy of the order dated August 22, 1942 is annexed to this petition as Appendix A, and a copy of the order dated August 28, 1942 is annexed to this petition as Appendix B.

(3) The nature of the proceedings before the Commission, which resulted in the orders of which review is hereby sought, was as follows:

(a) On or about May 9, 1940, the Commission instituted a proceeding against Electric Bond and Share Company, your petitioner and other companies entitled "In the Matter of Electric Bond and Share Company, et al., File No. 59-12" by "Notice of and Order for hearing pursuant to Section 11(b)(2) of the Public Utility Holding Company Act of 1935" in which it was charged that "The structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated", and "Voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company".

Said Section 11(b)(2) of the Act, in so far as it is here material, provides as follows:

"SEC. 11 * * * (b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

* * * * *

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of

such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. * * *"

(b) After certain motions and proceedings, the Commission, on June 7, 1940, issued an order limiting the proceeding initially "to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American & Foreign Power Company, Inc., or any of them, in order to insure that the structure of the holding company system of the Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting power shall not be unfairly or inequitably distributed among security holders of such system * * *."

(c) An answer on behalf of your petitioner to the allegations contained in the said notice and order for hearing was filed with the Commission on June 15, 1940 admitting or denying said allegations, and setting forth various defenses, including the defense that the Section of the Act under which the proceeding was instituted was unconstitutional.

(d) Thereafter, on June 18, 1940 hearings were commenced before an Examiner of the Commission under said notice and order as limited by said order of June 7, 1940 and were continued from time to time.

(e) After counsel for the Public Utilities Division

of the Commission had submitted certain evidence to the Examiner in said proceeding, said counsel claimed that they had made out a *prima facie* case and rested their case. Thereafter, on September 9, 1940 an amended answer, which was substantially the same as the original answer, was filed, and on the same date a motion to dismiss the proceeding was filed on behalf of your petitioner on various grounds set forth in said motion, including questions of constitutionality.

(f) On July 23, 1941 your petitioner, reserving its constitutional rights, filed with the Commission its application under Section 11(e) of the Act for approval of the plan of reorganization annexed to said application.

(g) On December 6, 1941 your petitioner filed with the Commission its motion to consolidate the proceeding instituted by the Commission against your petitioner and others under Section 11(b)(2) of the Act, with your petitioner's application for approval of the above mentioned plan filed by it with the Commission.

(h) Hearings before the Examiner under the Commission's notice and order for hearing, in so far as they related to your petitioner, continued from time to time, with adjournments, until July 22, 1942 when the hearings were closed, and your petitioner then renewed its motion to dismiss the proceeding.

(i) On August 22, 1942 the Commission made and filed its order in the proceeding, based on its findings and opinion, denying your petitioner's motion to dismiss the proceeding, denying your petitioner's motion for consolidation, and ordering that the existence of your petitioner shall be terminated and that it shall be dissolved. This is one of the orders of which review is sought by this petition and is attached hereto as Appendix A.

(j) On August 27, 1942 your petitioner filed an application with the Commission, within the time prescribed by the rules of the Commission, for rehearing and to vacate and set aside the Commission's order dated August 22, 1942. By order made and filed on August 28, 1942, the Commission denied said petition. This is the other order of which this petition seeks review and is attached hereto as Appendix B.

(4) The jurisdiction of this Court is invoked under Section 24(a) of the Act which, in part, provides as follows:

"SEC. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * *"

Your petitioner resides in the State of Maine, which is within the First Judicial Circuit.

(5) The objections of your petitioner to the orders of the Commission of which review is hereby sought are as follows:

(a) Section 11(b)(2) of the Act, and the proceeding instituted and conducted by the Commission thereunder, are unconstitutional and void in that,

(i) Said Section 11(b)(2) is not a regulation of commerce, nor on the subject of bankruptcies, nor for the establishment of post offices and post roads, within the meaning of the applicable clauses of Article I, Section 8, of the Constitution of the United

States, and is not within any other power vested in the Congress by said Constitution, but is an invasion of the powers reserved to the states or the people within the meaning of Article X of the Amendments to the Constitution of the United States in that it seeks to interfere with and control corporations established under State laws, the exercise by them of their charter powers, and the distribution of voting power among security holders in corporations created under and governed by the laws of the various states;

(ii) The enforcement of said Section 11(b)(2) or of any order made by the Commission thereunder, which would require elimination of, or a change in corporate structure of, any company in the system, or redistribution of voting power among security holders, will deprive your petitioner of property without due process of law in violation of Article V of the Amendments to the Constitution of the United States;

(iii) Said Section 11(b)(2) delegates to the Commission legislative power of the Congress in violation of Article I, Sections 1 and 8, of the Constitution of the United States in that it affords no guide or standard or definition for the determination of what form of corporate structure may be approved by the Commission on the one hand, or held by it on the other hand to unduly or unnecessarily complicate the structure of a holding company system, or what is a fair or equitable distribution of voting power among security holders, but entrusts such determination to the unlimited discretion of the Commission. The words used are not referable to any grant of federal power and are merely an unlimited grant of power to the Commission to make such al-

terations or changes in corporate structure or distribution of voting power among security holders as the Commission may deem appropriate;

(iv) Said Section 11(b)(2) purports to authorize abrogation and restatement of contract rights among security holders of companies not made parties respondent, and of security holders of your petitioner in proceedings to which such security holders are not parties, or capable of being made parties, and its application and enforcement would deprive such non-respondent companies and security holders of property without due process of law, in violation of Article V of the Amendments to the Constitution of the United States;

(v) Said Section 11(b)(2), as applied by the orders sought to be reviewed, is an *ex post facto* law in violation of Article I, Section 9, of the Constitution of the United States.

(b) If, notwithstanding the foregoing, the said Section 11(b)(2) may be constitutionally applied, it may be so applied only (i) in the administration of a constitutional grant of power to the Commission to regulate corporations engaged in interstate commerce, and then only in so far as its application may constitute a regulation of interstate commerce within the powers granted to the Congress under the provisions of Article I, Section 8, of the Constitution of the United States, and neither your petitioner, nor any of its subsidiaries, is either in its corporate existence or structure or in the distribution of voting rights of its security holders within the orbit of such power; (ii) in the administration and exercise of the bankruptcy powers conferred upon the Congress by Article I, Section 8, of the Constitution of the United States, and neither your petitioner nor any of its subsidiaries is either insolvent or

bankrupt or subject to such bankruptcy powers; or (iii) as auxiliary to a valid order made by the Commission under Section 11(b)(1) of the Act (if said Section be constitutional, which your petitioner denies) after or in connection with the making of a valid order under said Section 11(b)(1) which to be effectually carried out requires a revamping of corporate structure or the elimination of some company or redistribution of voting power among security holders to effectuate the purposes of said Section 11(b)(1).

(c) For the reasons, among others, stated in paragraph (b)(iii), *supra,* the Commission was without power to proceed with hearings in the proceeding under Section 11(b)(2); except after the completion of, or as auxiliary to, or in conjunction with, its proceeding under Section 11(b)(1) which is pending before the Commission.

(d) The notice and order for hearing by which the Commission instituted the proceeding was defective for want of necessary parties, in that subsidiary companies of your petitioner named in said notice and order and whose position and voting rights of whose securities in the system would necessarily be considered and affected were not made parties; and further in that security holders of the companies affected whose rights would necessarily be involved were likewise not made parties. The orders of the Commission sought to be reviewed necessarily affect contract and property rights of individual and corporate holders of such securities, and could not be made in a proceeding to which said security holders are not parties.

(e) The orders sought to be reviewed which direct that your petitioner's existence shall be terminated and that it shall be dissolved for the reason that your petitioner's "corporate structure and continued existence * * * unduly or unnecessarily complicate the

structure, or unfairly or inequitably distribute voting power among security holders, of the holding-company system of Electric Bond and Share Company" were beyond the power of the Commission under the Act and such application by the Commission of Section 11(b)(2) of the Act deprives your petitioner, its security holders, its subsidiaries and their security holders, of property without due process of law, in violation of Article V of the Amendments to the Constitution of the United States.

(f) Your petitioner should not be dissolved in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated or that voting power shall not be unfairly or inequitably distributed among security holders of that system, since such dissolution would deprive your petitioner, its security holders, its subsidiaries, and their security holders, of property without due process of law in violation of Article V of the Amendments to the Constitution of the United States.

(g) The dissolution of your petitioner is not an appropriate remedy to carry out the requirements of the Act or to give effect to the intent of Congress as expressed in the Act.

(h) The orders hereby sought to be reviewed are not in conformity with Section 11(b)(2) which provides that it shall be the duty of the Commission "as soon as practicable after January 1, 1938" to require steps to be taken as set forth in that Section. Said orders should not have been made since it is not "practicable" at this time to require the acts provided for therein in view of the effect of the present emergency created by the war including the depressed condition of financial markets and the present uncertainties and difficulties of our national economy. Furthermore, said

orders were premature in that the studies and investigations prescribed in Section 30 of the Act had not been made by the Commission.

(i) The Commission erred in overruling and denying your petitioner's motion to dismiss the Commission's notice and order for hearing and the proceedings thereunder, made at the conclusion of the Commission's case and renewed at the conclusion of the hearings.

(j) The Commission erred in sustaining the rulings of the Trial Examiner excluding testimony offered by your petitioner and in rejecting offers of proof in support thereof with respect to the valuation of assets of your petitioner and the earning power thereof, both as bearing on the issues in said proceeding under Section 11(b)(2) of the Act and as bearing on the plan of reorganization filed by your petitioner under Section 11(e) of the Act.

(k) The Commission erred in denying the motion of your petitioner to consolidate the application of your petitioner for approval of said plan of reorganization filed under Section 11(e) of the Act with the said proceeding under Section 11(b)(2) of the Act.

(l) The Commission erred in its findings and conclusions (on which its orders are based) that the corporate structure and continued existence of your petitioner unduly and unnecessarily complicate the structure of the Electric Bond and Share Company holding company system, and unfairly and inequitably distribute voting power among the security holders of said system.

(m) The Commission erred in its findings and conclusions (on which its orders are based) that to effect the requirements of Section 11(b)(2) of the Act it is necessary that your petitioner's existence be terminated and that said company be dissolved.

(n) The Commission erred in its findings and conclusions (on which its orders are based) to the effect that the plan of reorganization filed by your petitioner under Section 11(e) of the Act is defective and not entitled to consideration prior to the entry of said orders.

Wherefore your petitioner, American Power & Light Company, respectfully prays (a) that this Honorable Court take jurisdiction over the parties and subject matter of this petition; (b) that a copy hereof be served upon the respondent Commission, as prescribed by law; (c) that this Honorable Court review the said orders of the respondent Commission, dated August 22, 1942 and August 28, 1942, respectively, and upon such review set aside said orders in whole; and (d) that this Honorable Court grant your petitioner such other and further relief as may be deemed just and proper in the premises.

And your petitioner will ever pray.

Respectfully submitted,

AMERICAN POWER & LIGHT COMPANY

By H. L. ALLER, *President.*

Attest: D. W. JACK, *Secretary.*

(CORPORATE SEAL)

Dated October 19, 1942.

SIMPSON THACHER & BARTLETT,
120 Broadway, New York, N. Y.

REID & PRIEST,
2 Rector Street, New York, N. Y.

ROOT, CLARK, BUCKNER & BALLANTINE,
31 Nassau Street, New York, N. Y.

Attorneys for Petitioner

JOHN F. MACLANE,
FRANK A. REID,
ARTHUR A. BALLANTINE,
of Counsel.

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.

H. L. ALLER, being duly sworn, deposes and says that he is President of AMERICAN POWER & LIGHT COMPANY and that he has read the above petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

H. L. ALLER.

Sworn to before me this 19th day of October, 1942.

FLORENCE O. DEMO,
Notary Public, Bronx County.

Bronx Co. Clk's No. 26, Reg. No. 37-D-44
N. Y. Co. Clk's No. 140, Reg. No. 4-D-72
Commission Expires March 30, 1944

APPENDIX A.

ORDER REQUIRING DISSOLUTION OF AMERICAN POWER & LIGHT COMPANY.

August 22, 1942.

[MEMORANDUM: This order of dissolution is here omitted as it is printed as part of the Transcript of Record, page 650 *infra*. A. I. CHARRON, *Clerk*.]

APPENDIX B.

ORDER DENYING PETITION TO VACATE AND SET ASIDE ORDER OF AUGUST 22, 1942, AND FOR REHEARING.

August 28, 1942.

[MEMORANDUM: This order is here omitted as it is printed as part of the Transcript of Record, page 677 *infra*. A. I. CHARRON, *Clerk*.]

No. 3824.

ELECTRIC POWER & LIGHT CORPORATION,
PETITIONER,
v.
SECURITIES AND EXCHANGE COMMISSION,
RESPONDENT.

PETITION OF ELECTRIC POWER & LIGHT CORPORATION FOR REVIEW OF ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION.

[FILED IN CIRCUIT COURT OF APPEALS OCTOBER 20, 1942.]

To the United States Circuit Court of Appeals for the First Circuit and the Honorable Judges thereof:

The petition of Electric Power & Light Corporation respectfully shows to this Court as follows:

(1) Your petitioner is a corporation organized and existing under the laws of the State of Maine. Its residence and principal corporate office is in the State of Maine and it has at no time qualified to do business as a foreign corporation in any other State.

(2) Your petitioner being aggrieved by certain orders of the Securities and Exchange Commission (hereinafter called the "Commission"), dated August 22, 1942 and August 28, 1942, respectively, files this petition under Section 24(a) of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act") to review such orders and set them aside in whole. A copy of the order dated August 22, 1942 is annexed to this petition as Appendix A, and a copy of the order dated August 28, 1942 is annexed to this petition as Appendix B.

(3) Your petitioner is a "registered holding company," as that term is defined in Section 2(a)(12) of the Act, and is one of the companies in the so-called Electric Bond and

Share Company System, a "holding-company system" within the definition of Section 2(a)(9) of the Act. Your petitioner owns, directly or indirectly, stock or other interests in 25 subsidiaries, not including 13 name saving corporations. The book value of your petitioner's "Investment Securities and Advances—Subsidiaries, Etc.," as shown by its balance sheet as of December 31, 1941, is $184,409,321.09. Your petitioner at September 30, 1942, had issued and outstanding 515,135 shares of $7 Preferred Stock, 225,430⅔ shares of $6 Preferred Stock, 74,814 shares of Second Preferred Stock, Series "A" ($7), and 3,454,689 shares of Common Stock. Such shares of capital stock are of no par value and have a combined stated value on your petitioner's balance sheet of $155,044,139.40. In addition your petitioner had outstanding at the same date $30,032,000.00 principal amount of long term debt. The ownership of such securities by the public and by Electric Bond and Share Company (exclusive of 973 shares $7 Preferred Stock and 902 shares of Common Stock which have been reacquired) is shown by the following table:

Title of Security	Held by Public Number of Shares or Principal Amount	%	Held by Electric Bond and Share Company Number of Shares	%
Gold Debentures, 5% Series, due 2030	$30,032,000	100	——	——
$7 Preferred Stock	513,677 shs.	99.91	485 shs	0.09
$6 Preferred Stock	255,430⅔ shs.	100	——	——
Second Preferred Stock, Series "A" ($7)	60,909 shs.	81.41	13,905 shs.	18.59
Common Stock	1,477,149 shs.	42.77	1,976,638 shs.	57.23

Since 1935 no director or officer of your petitioner has been a director, officer or employee of Electric Bond and Share Company or any of its affiliated or subsidiary companies other than your petitioner and its subsidiaries. Although Electric Bond and Share Company owns securities repre-

senting 46.83% of the total voting power of your petitioner, the balance of such securities, including all the long term debt and most of the senior stocks, are held by the general investing public, which would suffer substantial injury by the enforcement of the orders referred to above in paragraph (2).

(4) The nature of the proceedings before the Commission, which resulted in the orders of which review is hereby sought, was as follows:

(a) On or about May 9, 1940, the Commission instituted a proceeding against Electric Bond and Share Company, your petitioner and other companies entitled "In the Matter of Electric Bond and Share Company, *et al.*, File No. 59-12" by "Notice of and Order for hearing pursuant to Section 11(b)(2) of the Public Utility Holding Company Act of 1935" in which it was charged, among other things, that "The structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated", and "Voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company".

Section 11(b)(2) of the Act, in so far as it is here material, provides as follows:

"SEC. 11 * * * (b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

* * * * *

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-

company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. * * *"

(b) After certain motions and proceedings, the Commission on June 7, 1940, issued an order limiting the proceeding initially "to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American & Foreign Power Company, Inc., or any of them, in order to insure that the structure of the holding company system of the Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting power shall not be unfairly or inequitably distributed among security holders of such system * * *".

(c) An answer on behalf of your petitioner to the allegations contained in the said notice and order for hearing was filed with the Commission on June 15, 1940 admitting or denying said allegations, and setting forth various defenses, including the defense that the Section of the Act under which the proceeding was instituted was unconstitutional.

(d) Thereafter, on June 18, 1940 hearings were commenced before an Examiner of the Commission

under said notice and order as limited by said order of June 7, 1940, and continued from time to time until August 22, 1942.

(e) After counsel for the Public Utilities Division of the Commission had submitted certain evidence to the Examiner in said proceeding, said counsel claimed that they had made out a *prima facie* case and rested their case. Thereafter, on September 9, 1940, an amended answer, which was substantially the same as the original answer, was filed, and on the same date a motion to dismiss the proceeding was filed on behalf of your petitioner on various grounds set forth in said motion, including questions of constitutionality.

(f) On December 4, 1941 your petitioner, reserving its constitutional rights, filed with the Commission its application under Section 11(e) of the Act for approval of the plan of reorganization annexed to said application.

(g) On December 6, 1941 your petitioner filed with the Commission its motion to consolidate the proceeding instituted by the Commission against your petitioner and others under Section 11(b)(2) of the Act, with your petitioner's application for approval of the above mentioned plan filed by it with the Commission.

(h) Hearings before the Examiner under the Commission's notice and order for hearing, in so far as they related to your petitioner, continued from time to time, with adjournments, until August 22, 1942 when the hearings were closed, and your petitioner renewed its motion to dismiss the proceeding at or near the conclusion of said hearing.

(i) On August 22, 1942 the Commission made and entered its order in the proceeding, based on its findings and opinion, denying your petitioner's motion to dismiss the proceeding, denying your petitioner's mo-

tion for consolidation of the dissolution proceedings with the proceedings commenced by your petitioner for consideration of its plan, and ordering that the existence of your petitioner shall be terminated and that it shall be dissolved. This is the principal order of which review is sought by this petition and is attached hereto as Appendix A.

(j) On August 27, 1942 your petitioner filed an application with the Commission, within the time prescribed by the rules of the Commission, for rehearing and to vacate and set aside the Commission's order dated August 22, 1942. By order made and entered August 28, 1942, the Commission denied said petition. This is the other order of which this petition seeks review and is attached hereto as Appendix B.

(5) The jurisdiction of this Court is invoked under Section 24(a) of the Act which, in part, provides as follows:

"Sec. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * *"

Your petitioner resides in the State of Maine, which is within the First Judicial Circuit.

(6) The objections of your petitioner to the orders of the Commission of which review is hereby sought are as follows:

(a) Section 11(b)(2) of the Act, and the proceed-

ing instituted and conducted by the Commission thereunder, are unconstitutional and void in that,

(i) Said Section 11(b)(2) is not a regulation of commerce, nor on the subject of bankruptcies, nor for the establishment of post offices and post roads, within the meaning of the applicable clauses of Article I, Section 8, of the Constitution of the United States, and is not within any other power vested in the Congress by said Constitution, but is an invasion of the powers reserved to the states or the people within the meaning of Article X of the Amendments to the Constitution of the United States in that it seeks to interfere with and control corporations with respect to matters which are of concern only to the States under whose Constitutions and local laws such corporations are created; it seeks to interfere with and control the exercise by such corporations of their charter powers granted by such States under such Constitutions and local laws; and it seeks to interfere with and control the distribution of voting power among security holders in corporations as established in pursuance of the respective Constitutions and local laws of such States.

(ii) The enforcement of said Section 11(b)(2) or of any order made by the Commission thereunder, which would require elimination of, or a change in the corporate structure of, your petitioner or any subsidiary company of your petitioner, or a redistribution of voting power among security holders of your petitioner or any subsidiary company of your petitioner, will result in an arbitrary destruction of property values in which your petitioner and its security holders have interests and will deprive your petitioner and its security holders of property with-

out due process of law in violation of Article V of the Amendments to the Constitution of the United States.

(iii) Said Section 11(b)(2) delegates to the Commission legislative power of the Congress in violation of Article I, Sections 1 and 8, of the Constitution of the United States in that it affords no guide or standard or definition for the determination of what form of corporate structure may be approved by the Commission, or be held by it to unduly or unnecessarily complicate the structure of a holding company system, or what is a fair or equitable distribution of voting power among security holders, but entrusts to the unlimited discretion of the Commission the determination of such broad, important and far reaching questions of policy and governmental regulation and control. The words are not referable to any grant of federal power and are merely an unlimited grant of power to the Commission to make such alterations or changes in corporate structure or distribution of voting power among security holders as the Commission may deem appropriate.

(iv) Section 11(b)(2) purports to authorize abrogation and restatement of contract rights among security holders of companies, including security holders of your petitioner. The act does not even require that such security holders be made parties to the proceedings in which their contract rights are to be so affected. They were not made parties to the proceedings in the instant case and many of them were not capable of being made parties. Such application and enforcement of the Act would deprive such non-respondent companies and security holders of property without due process of law, in violation

of Article V of the Amendments to the Constitution of the United States.

(v) Section 11(b)(2), as applied by the orders sought to be reviewed, is an *ex post facto* law in violation of Article I, Section 9, of the Constitution of the United States.

(b) If, notwithstanding the foregoing, the said Section 11(b)(2) may be constitutionally applied, it may be so applied only (i) in the administration of a constitutional grant of power to the Commission to regulate corporations engaged in interstate commerce, and then only in so far as its application may constitute a regulation of interstate commerce within the powers granted to the Congress under the provisions of Article I, Section 8, of the Constitution of the United States, and neither your petitioner, nor any of its subsidiaries, is either in its corporate existence or structure or in the distribution of voting rights of its security holders within the orbit of such power; (ii) in the administration and exercise of the bankruptcy powers conferred upon the Congress by Article I, Section 8, of the Constitution of the United States, and neither your petitioner nor its subsidiaries are either insolvent or bankrupt or subject to such bankruptcy powers; or (iii) as auxiliary to a valid order made by the Commission under Section 11(b)(1) of the Act (if said Section be constitutional, which your petitioner denies) after or in connection with the making of a valid order under said Section 11(b)(1) which requires a revamping of corporate structure or the elimination of some company or redistribution of voting power among security holders to effectuate the purposes of said Section 11(b)(1).

(c) For the reasons, among others, stated in para-

graph (b)(iii), *supra*, the Commission was without power to proceed with hearing in the proceeding under Section 11(b)(2), except after the completion of, or as auxiliary to, or in conjunction with, its proceeding under Section 11(b)(1) which is pending before the Commission.

(d) The notice and order for hearing by which the Commission instituted the proceeding was defective for want of necessary parties, in that subsidiary companies of your petitioner named in said notice and order and whose position in the System and the voting rights of whose securities in the System would necessarily be considered and affected were not made parties; and further in that security holders of the companies affected whose rights would necessarily be involved were likewise not made parties. The orders of the Commission sought to be reviewed necessarily affect contract and property rights of individual and corporate holders of such securities, and could not be made in a proceeding to which said security holders are not parties.

(e) The orders sought to be reviewed which direct that your petitioner's existence shall be terminated and that it shall be dissolved for the reason that your petitioner's "corporate structure and continued existence * * * unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of the holding-company system of Electric Bond and Share Company" were beyond the power of the Commission under the Act and such application by the Commission of Section 11(b)(2) of the Act deprives your petitioner, its security holders, its subsidiaries and their security holders, of property without due process of law, in

violation of Article V of the Amendments to the Constitution of the United States.

(f) Your petitioner should not be dissolved in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated or that voting power shall not be unfairly or inequitably distributed among security holders of that System, since such dissolution would deprive your petitioner, its security holders, its subsidiaries, and their security holders, of property and property rights without due process of law in violation of Article V of the Amendments to the Constitution of the United States.

(g) The dissolution of your petitioner is not an appropriate remedy to carry out the requirements of the Act or to give effect to the intent of Congress as expressed in the Act.

(h) The orders hereby sought to be reviewed are not in conformity with Section 11(b)(2) which provides that it shall be the duty of the Commission "as soon as practicable after January 1, 1938" to require steps to be taken as set forth in that Section. Said orders should not have been made since it is not "practicable" at this time to require the acts provided for therein in view of the effect of the present emergency created by the war including the depressed condition of financial markets and the present uncertainties and difficulties of our national economy.

(i) The Commission erred in overruling and denying your petitoner's motion to dismiss the Commission's notice of and order for hearing and the proceedings thereunder, made at the conclusion of the Commission's case and renewed at or near the conclusion of the hearings.

(j) The Commission erred in denying the motion of your petitioner to consolidate the application of your petitioner for approval of said plan of reorganization filed under Section 11(e) of the Act with the said proceedings under Section 11(b)(2) of the Act.

(k) The Commission erred in its findings and conclusions (on which its orders are based) that the corporate structure and continued existence of your petitioner unduly and unnecessarily complicates the structure of the Electric Bond and Share Company holding company system, and unfairly and inequitably distributes voting power among the security holders of such system.

(l) The Commission erred in its findings and conclusions (on which its orders are based) that to effect the requirements of Section 11(b)(2) of the Act it is necessary that your petitioner's existence be terminated and that said company be dissolved.

(m) The Commission erred in its findings and conclusions (on which its orders are based) to the effect that the plan of reorganization filed by your petitioner under Section 11(e) of the Act is defective and not entitled to consideration prior to the entry of said order.

Wherefore your petitioner, Electric Power & Light Corporation, respectfully prays (a) that this Honorable Court take jurisdiction over the parties and subject matter of this petition; (b) that a copy hereof be served upon the respondent Commission, as prescribed by law; (c) that this Honorable Court review the said orders of the respondent Commission, dated August 22, 1942 and August 28, 1942, respectively, and upon such review set aside said orders in whole; and (d) that this Honorable Court grant your peti-

tioner such other and further relief as may be deemed just and proper in the premises.

And your petitioner will ever pray.

Respectfully submitted,

ELECTRIC POWER & LIGHT CORPORATION,
By JOE H. GILL, *President.*

Attest: E. H. DIXON, *Secretary.*
[CORPORATE SEAL.]
Dated October 19, 1942.

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL,
63 Wall Street, New York, N. Y.
Attorneys for Petitioner
By R. GRAHAM HEINER, *A Partner.*

BOYKIN C. WRIGHT,
R. GRAHAM HEINER,
DANIEL JAMES,
of Counsel.

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

JOE H. GILL, being duly sworn, deposes and says that he is President of ELECTRIC POWER & LIGHT CORPORATION and that he has read the above petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

JOE H. GILL.

Sworn to before me this nineteenth day of October, 1942.

ALICE M. POWELL,
[NOTARIAL SEAL] Notary Public, Queens County

Queens Co. Clk's No. 4173,
Certificates Filed in
N. Y. Co. Clk's No. 731, Reg. No. 3P441
Westchester County Clerk
Commission Expires March 30, 1943

APPENDIX A.

ORDER REQUIRING DISSOLUTION OF ELECTRIC POWER & LIGHT CORPORATION.

August 22, 1942.

[MEMORANDUM: This order of dissolution is here omitted as it is printed as part of the Transcript of Record, page 652 *infra*. A. I. CHARRON, *Clerk*.]

APPENDIX B.

ORDER DENYING PETITION TO VACATE AND SET ASIDE ORDER OF AUGUST 22, 1942, AND FOR REHEARING.

August 28, 1942.

[MEMORANDUM: This order is here omitted as it is printed as part of the Transcript of Record, page 679 *infra*. A. I. CHARRON, *Clerk*.]

TRANSCRIPT OF RECORD.

[Filed in Circuit Court of Appeals November 30, 1942.]

(Portions designated by Stipulation of the Parties.)

[Document No. 1.]

Mailed for Service May 10, 1940.

United States of America

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the ninth day of May, A. D., 1940.

Reg. No. Docket Unit 977761-977770.

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
American & Foreign Power Company, Inc.,
Ebasco Services Incorporated,

Respondents.

File No. 59-12.

NOTICE OF AND ORDER FOR HEARING PURSUANT TO SECTION 11 (b) (2) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Commission having examined the corporate structure of Electric Bond and Share Company, a registered holding company, and its subsidiary companies, the relationships

among the companies in the holding company system of said Electric Bond and Share Company, the character of the interests thereof and the properties owned or controlled thereby, and the Commission having reasonable grounds to believe that:

I.

1. Electric Bond and Share Company, a registered holding company, is a corporation organized under the laws of the State of New York and maintains principal offices for the doing of business in the City of New York, State of New York.

2. As of December 31, 1938, the capitalization of said Electric Bond and Share Company was as follows:

Type of Security.	Amount Outstanding.	Par or Stated Value.
$5 Preferred Stock, Cumulative, No Par	300,000 shares	$ 30,000,000.00
$6 Preferred Stock, Cumulative, No Par	1,155,655 shares	115,565,500.00
Common Stock, $5 Par	5,267,164+ shares	26,335,733.78

3. Each share of stock of each of the above classes is entitled to one vote with respect to ordinary business of the corporation. The $5 Preferred Stock and $6 Preferred Stock have equal rank as to dividends and in liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. Dividends have been regularly declared and paid on both classes of preferred stock. No dividends of any kind have been declared or paid on the common stock since January 16, 1933; no dividends in cash have been declared or paid on the common stock since organization of the present company in 1929.

4. The following are subsidiary companies of said Electric Bond and Share Company and are also registered holding companies within the meaning of the Public

Utility Holding Company Act of 1935 (hereinafter referred to as the Act):

Name.	State of Organization.
American Power & Light Company	Maine
Pacific Power & Light Company	Maine
Electric Power & Light Corporation	Maine
Utah Power & Light Company	Maine
National Power & Light Company	New Jersey
American & Foreign Power Company Inc.	Maine

In addition, said Electric Bond and Share Company directly or indirectly owns, controls, or holds with power to vote, more than 10 per centum of the outstanding voting securities of American Gas and Electric Company, a registered holding company. An application pursuant to Section 2 (a) (8) of the Act for an order declaring that neither American Gas and Electric Company nor any of its subsidiary companies is a subsidiary company of Electric Bond and Share Company is now pending before the Commission. The effect of the filing of such an application is indicated in paragraph 45 below.

5. The following are subsidiary companies of said Electric Bond and Share Company and are engaged in the businesses respectively set forth opposite their names:

Name.	Place of Organization.	Nature of Business.
Ebasco Services Incorporated	New York	Service company
Two Rector Street Corporation	New York	Real estate
Emprezas Electricas Brasileiras, S.A.	Brazil	Service company
Compania Constructora del Pacifico	Chile	Construction company

6. The number of shares of capital stock and option warrants of each of the registered holding companies named

in paragraph 4 which were directly owned by said Electric Bond and Share Company as of December 31, 1938 was as follows:

	Owned by Electric Bond and Share Company	
	Number of Shares.	Percent of Total Outstanding.
American Power & Light Company		
$5 Preferred Stock	51,840	5.30
Common Stock	937,221	31.10
Pacific Power & Light Company	none owned directly	
Electric Power & Light Corporation		
$7 Preferred Stock	485	.09
Second Preferred Stock, Series A ($7)	13,905	17.34
Common Stock	1,976,638	57.59
Option Warrants to Purchase Common Stock	393,408	70.72
Utah Power & Light Company	none owned directly	
National Power & Light Company		
Common Stock	2,540,450	46.56
American & Foreign Power Company Inc.		
$6 Preferred Stock	65,809	17.00
Preferred Stock ($7)	13,800	2.88
Second Preferred Stock, Series A ($7)	2,158,236	83.02
Common Stock	881,500	42.51
Option Warrants to Purchase Common Stock	5,812,884	87.39
American Gas and Electric Company		
Common Stock	846,986	18.89

In addition, said Electric Bond and Share Company owned substantial amounts of (a) other classes of securities of certain of said registered holding companies, (b) various securities of certain subsidiary companies, and (c) various securities of companies not in the holding company system of said Electric Bond and Share Company.

7. The consolidated assets of American Power & Light Company and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $828,116,495.28. As of the same date, the aggregate market value of voting securities of American Power & Light Company held by Electric Bond and Share Company was $7,697,951. The consolidated assets of Electric Power & Light Corporation and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $719,307,830.60. As of the same date, the aggregate market value of voting securities of Electric Power & Light Corporation held by Electric Bond and Share Company was $22,750,131. The consolidated assets of National Power & Light Company and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $583,370,009.85. As of the same date, the aggregate market value of voting securities of National Power & Light Company held by Electric Bond and Share Company was $20,958,712. The consolidated assets of American & Foreign Power Company Inc. and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $753,668,025.03. As of the same date, the aggregate market value of voting securities of American & Foreign Power Company Inc. held by Electric Bond and Share Company was $3,085,250. Since December 31, 1938, the market values of the voting securities of the aforementioned companies, except in the case of National Power & Light Company, have declined substantially.

8. As of December 31, 1938 the holding company system of Electric Bond and Share Company (not including American & Foreign Power Company Inc. and its subsidiary companies or American Gas and Electric Company and its subsidiary companies) served with elec-

tricity approximately 3,649 communities having an aggregate population of approximately 8,366,000, such communities being located in the States of

Alabama	Minnesota	Pennsylvania
Arizona	Mississippi	South Carolina
Arkansas	Missouri	Tennessee
Colorado	Montana	Texas
Florida	Nebraska	Utah
Idaho	Nevada	Washington
Iowa	New Mexico	Wisconsin
Kansas	North Carolina	Wyoming
Louisiana	Oregon	

As of December 31, 1938 the holding company system of Electric Bond and Share Company (not including American & Foreign Power Company Inc. and its subsidiary companies) served with gas approximately 407 communities having an aggregate population of approximately 3,209,000, such communities being located in the States of

Arizona	Oregon
Arkansas	Pennsylvania
Florida	Tennessee
Louisiana	Texas
Mississippi	Washington
Montana	Wisconsin

The holding company system of Electric Bond and Share Company through the medium of its various subsidiary companies is also engaged in various other businesses as set forth elsewhere herein.

9. A corporate chart showing the associate companies in the Electric Bond and Share Company holding company system and the percentages of voting control in said holding company system (not including American Gas

and Electric Company and its subsidiary companies and not including the subsidiary companies of American & Foreign Power Company Inc.) is attached hereto and marked Exhibit A and is made part hereof as if set out herein in full.

II.

10. American Power & Light Company, referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of Maine and maintains principal offices for the doing of business in the City of New York, State of New York.

11. As of December 31, 1938 the capitalization of said American Power & Light Company was as follows:

Type of Security.	Amount Outstanding.	Principal Amount, Par or Stated Value.
Funded Debt	$47,502,500.00	$47,502,500.00
Preferred Stock ($6) Cumulative, No Par	793,581+ shares	79,300,926.00
$5 Preferred Stock, Cumulative, No Par	978,444 shares	97,844,400.00
Common Stock, No Par	3,013,812 shares*	37,434,351.29

*Includir 5,301 shares reacquired.

The number of shares of each class of capital stock owned by Electric Bond and Share Company is stated in paragraph 6 above.

12. Each share of stock of each of the above classes is entitled to one vote with respect to ordinary business of the corporation. The Preferred Stock ($6) and the $5 Preferred Stock have equal rank as to dividends and in liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. As of December 31, 1938 unpaid cumulative dividends in arrears on the two classes of preferred stock totaled $30,167,306.25, representing slightly more than 3 years' requirements

on each class. The amount of such dividends in arrears has increased since December 31, 1938 by reason of the payment of only partial dividends during the year 1939. No dividends have been paid on the common stock since June 1, 1932.

13. The following are subsidiary companies of said Electric Bond and Share Company and of said American Power & Light Company and are public-utility companies within the meaning of the Act:

Name	State of Organization.	Nature of Business.
Central Arizona Light and Power Company	Arizona	Electric and Gas
Florida Power & Light Company	Florida	Electric, Gas, and Ice
Kansas Gas and Electric Company	West Virginia	Electric
Minnesota Power & Light Company	Minnesota	Electric and Heating
The Montana Power Company	New Jersey	Electric, Gas, Heating and Water
Nebraska Power Company	Maine	Electric
New Mexico Electric Service Company	New Mexico	Electric
Northern Power Company	Wisconsin	Electric
Northwestern Electric Company	Washington	Electric and Heating
Pacific Power & Light Company	Maine	Registered holding company, Electric, Heating, and Water
Inland Power & Light Company	Oregon	Electric
Portland Gas & Coke Company	Oregon	Gas
Superior Water, Light and Power Company	Wisconsin	Electric, Gas and Water
Texas Electric Service Company	Texas	Electric
Texas Power & Light Company	Texas	Electric
Texas Public Utilities Corporation	Texas	Electric, Natural gas, Ice, and Water
The Washington Water Power Company	Washington	Electric, Water and Heating

Said Inland Power & Light Company, in addition to being a subsidiary company of Electric Bond and Share Company and of American Power & Light Company, is a subsidiary company of said Pacific Power & Light Company, a registered holding company.

14. The following are subsidiary companies of said Electric Bond and Share Company and of said American Power & Light Company and are not public-utility companies within the meaning of the Act, but are engaged in the businesses respectively set forth opposite their names:

Name.	State of Organization.	Nature of Business.
Consumers Water Company	Florida	Water
The Miami Beach Railway Company	Florida	Transportation
Miami Water Company	Florida	Water
Glacier Production Company	New Jersey	Natural gas: petroleum products
Great Falls Townsite Company	Montana	Hotel and real estate ownership
Yakima Credit Corporation	Washington	Financing fruit marketing
Gasco Finance Company	Oregon	Financing gas appliances
Utilities Land Company	Florida	Real estate
Spokane United Railways	Washington	Transportation

Said Yakima Credit Corporation, in addition to being a subsidiary company of Electric Bond and Share Company and of American Power & Light Company, is a subsidiary company of Pacific Power & Light Company, a registered holding company.

15. As of December 31, 1938, unpaid cumulative dividends in arrears on preferred stocks of subsidiary companies of American Power & Light Company totaled $10,305,484.99, of which $1,668,960.90 was applicable to preferred stocks held by said American Power & Light Company. As of December 31, 1939, the amount of such unpaid cumulative dividends in arrears had decreased by approximately 7 percent.

16. The consolidated assets of American Power & Light Company and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $828,116,495.28. As of the same date, the aggregate par, stated, or assigned value (in some cases based upon liquidating preferences, not including dividend arrear-

ages, of senior classes of stock) of voting securities of the subsidiaries consolidated held by American Power & Light Company was approximately $203,931,000. In addition, said American Power & Light Company owned substantial amounts of other classes of securities of certain of its subsidiary companies.

17. Pacific Power & Light Company, referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of Maine and maintains principal offices for the doing of business in the City of Portland, State of Oregon.

18. As of December 31, 1938, the capitalization of said Pacific Power & Light Company was as follows:

Type of Security.	Amount Outstanding	Principal Amount, Par or Stated Value.
Funded Debt	$23,294,500.00	$23,294,500.00
7% Preferred Stock, Cumulative, $100 par	58,100 shares*	5,810,000.00
$6 Preferred Stock, Cumulative, No Par	10,585 shares	1,058,500.00
Common Stock, No Par	1,000,000 shares	7,000,000.00

*Including 1,676 shares reacquired.

As of December 31, 1938, American Power & Light Company owned $2,794,500 principal amount of said funded debt and all shares of said Common Stock. As of December 31, 1938, Electric Bond and Share Company owned $285,000 principal amount of said funded debt.

19. Each share of 7% Preferred Stock and each share of Common Stock of Pacific Power & Light Company is entitled to one vote with respect to ordinary business of the corporation. The $6 Preferred Stock has no general voting power. The 7% Preferred Stock and $6 Preferred Stock have equal rank as to dividends and in

liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. As of December 31, 1938, unpaid cumulative dividends in arrears on the two classes of preferred stock totaled $191,032.50. Since December 31, 1938, the cumulative dividends in arrears have been paid in full. No dividends have been paid on the Common Stock since December 31, 1931.

III.

20. Electric Power & Light Corporation, referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of Maine and maintains principal offices for the doing of business in the City of New York, State of New York.

21. As of December 31, 1938 the capitalization of said Electric Power & Light Corporation was as follows:

Type of Security.	Amount Outstanding.	Principal Amount, Par or Stated Value.
Funded debt	$31,980,930.67	$31,980,930.67
$7 Preferred Stock, Cumulative, No Par	515,135 shares*	
$6 Preferred Stock, Cumulative, No Par	255,430+ shares	
Second Preferred Stock, Series A ($7), Cumulative, No Par	80,189 shares	155,044,139.40
Common Stock, No Par	3,433,189 shares**	
Option Warrants (without expiration date) to purchase Common Stock	556,254 warrants	

*Including 973 shares reacquired.

**Including 902 shares reacquired.

The number of shares of each class of capital stock owned by Electric Bond and Share Company is stated in paragraph 6 above.

22. Each share of $7 Preferred Stock, $6 Preferred Stock, and Common Stock of Electric Power & Light Corporation is entitled to one vote with respect to ordinary business of the corporation. The Second Preferred Stock, Series A ($7), has no general voting power. The $7 Preferred Stock and $6 Preferred Stock have equal rank, prior to the Second Preferred Stock, Series A ($7), as to dividends and in liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. The Second Preferred Stock, Series A ($7), has a liquidating value of $100 per share plus unpaid cumulative dividends. As of December 31, 1938, unpaid cumulative dividends in arrears on the three classes of preferred stock totaled $35,434,388.92, representing slightly more than 6 years' requirements on the $7 Preferred Stock and $6 Preferred Stock, and approximately 6¾ years' requirements on the Second Preferred Stock, Series A ($7). The amount of such dividends in arrears has increased since December 31, 1938 by reason of the failure to declare or pay any dividends during the year 1939. No dividends have been paid on the Common Stock since May 2, 1932.

23. The following are subsidiary companies of said Electric Bond and Share Company and of said Electric Power & Light Corporation and are public-utility companies within the meaning of the Act:

Name.	State of Organization.	Nature of Business.
Arkansas Power & Light Company	Arkansas	Electric, Gas, Water, Ice and Heating
Dallas Power & Light Company	Texas	Electric
Idaho Power Company	Maine	Electric
Louisiana Power & Light Company	Florida	Electric, Gas, Water, Ice, and Transportation
Mississippi Power & Light Company	Florida	Electric, Gas, Water, Ice, and Transportation

Name.	State of Organization.	Nature of Business.
New Orleans Public Service Inc.	Louisiana	Electric, Gas, and Transportation
United Gas Corporation	Delaware	Gas
Utah Power & Light Company	Maine	Registered holding company, Electric, and Heating
Utah Light and Traction Company	Utah	Electric and Transportation
The Western Colorado Power Company	Colorado	Electric

The two last-named companies, in addition to being subsidiary companies of Electric Bond and Share Company and of Electric Power & Light Corporation, are subsidiary companies of said Utah Power & Light Company, a registered holding company.

24. The following are subsidiary companies of said Electric Bond and Share Company and of said Electric Power & Light Corporation and are not public-utility companies within the meaning of the Act, but are engaged in the businesses respectively set forth opposite their names:

Name.	Place of Organization.	Nature of Business.
Capital Transportation Company	Delaware	Transportation
White River Power Company	Arkansas	Ownership of hydro site
Dallas Railway & Terminal Company	Texas	Transportation
Gentilly Development Company, Inc.	Louisiana	Real estate
Northern Texas Company	Delaware	Ownership of leased transportation properties
Compania Mexicana de Gas, S.A.	Mexico	Natural gas
Credito Industrial de Monterrey, S.A.	Mexico	Commercial banking
Duval Texas Sulphur Company	Texas	Sulphur
Houston Gas Securities Company	Delaware	Ownership of securities
Union Producing Company	Delaware	Development; natural gas; petroleum products
Springhill Land Company, Incorporated	Louisiana	Real estate
United Gas Pipe Line Company	Delaware	Natural gas; gasoline extraction
Houston Gulf Gas Company	Delaware	Development; natural gas; crude oil
United Oil Pipe Line Company	Delaware	Transportation of crude oil

25. As of December 31, 1938, unpaid cumulative dividends in arrears on preferred stocks of subsidiary companies of Electric Power & Light Corporation totaled $68,404,-705.42, of which $45,621,103. was applicable to preferred stocks held by said Electric Power & Light Corporation. As of December 31, 1939, the amount of such unpaid cumulative dividends in arrears had increased by approximately 7 percent.

26. The consolidated assets of Electric Power & Light Corporation and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $719,307,830.60. As of the same date, the aggregate par, stated, or assigned value (in some cases based upon liquidating preferences, not including dividend arrearages, of senior classes of stock) of voting securities of the subsidiaries consolidated held by Electric Power & Light Corporation was approximately $196,932,000. In addition, said Electric Power & Light Corporation owned substantial amounts of other classes of securities of certain of its subsidiary companies.

27. Utah Power & Light Company, referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of Maine and maintains principal offices for the doing of business in the City of Salt Lake City, State of Utah.

28. As of December 31, 1938, the capitalization of said Utah Power & Light Company was as follows:

Type of Security.	Amount Outstanding.	Principal Amount, Par or Stated Value.
Funded debt	$39,343,000.00	$39,343,000.00
$7 Preferred Stock, Cumulative, No Par	207,605 shares	20,780,218.95
$6 Preferred Stock, Cumulative, No Par	41,921 shares	4,178,568.21
Common Stock, No Par	3,000,000 shares	30,000,000.00

As of December 31, 1938, Electric Power & Light Corporation owned 2,100 shares of said $7 Preferred Stock and all shares of said Common Stock. As of December 31, 1938, Electric Bond and Share Company owned $300,000 principal amount of said funded debt.

29. Each share of stock of each of the above classes is entitled to one vote with respect to ordinary business of the corporation. The $7 Preferred Stock and $6 Preferred Stock have equal rank as to dividends and in liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. As of December 31, 1938 unpaid cumulative dividends in arrears on the two classes of preferred stock totaled $6,961,107.42, representing slightly more than 4 years' requirements on each class. As of December 31, 1939, the amount of such unpaid cumulative dividends in arrears had increased by approximately 8 percent. No dividends have been paid on the common stock since February 29, 1932.

IV.

30. National Power & Light Company, referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of New Jersey, and maintains principal offices for the doing of business in the City of New York, State of New York.

31. As of December 31, 1938, the capitalization of said National Power & Light Company was as follows:

Type of Security.	Amount Outstanding.	Principal Amount, Par or Stated Value.
Funded debt	$21,803,000.00	$21,803,000.00
$6 Preferred Stock, Cumulative, No Par	279,716 shares	
Common Stock, No Par	5,456,117 shares	125,839,094.67

The number of shares of each class of stock owned by Electric Bond and Share Company is stated in paragraph 6 above.

32. Each share of common stock is entitled to one vote with respect to ordinary business of the corporation. The $6 Preferred Stock has no general voting power. The $6 Preferred Stock has a liquidating value of $100 per share plus unpaid cumulative dividends. Dividends have been regularly declared and paid on both the $6 Preferred Stock and the Common Stock.

33. The following are subsidiary companies of said Electric Bond and Share Company and of said National Power & Light Company and are public-utility companies within the meaning of the Act:

Name.	State of Organization.	Nature of Business.
Birmingham Electric Company	Alabama	Electric, Transportation, and Heating
Carolina Power & Light Company	North Carolina	Electric and Transportation
The Edison Illuminating Company of Easton	Pennsylvania	Electric
Houston Lighting & Power Company	Texas	Electric
Lehigh Valley Transit Company	Pennsylvania	Electric and Transportation
Memphis Generating Company	Tennessee	Electric
Pennsylvania Power & Light Company	Pennsylvania	Electric, Gas, and Heating
Roanoke River Power Company	Virginia	Electric; ownership of development site
West Tennessee Gas Company	Florida	Gas

34. The following are subsidiary companies of said Electric Bond and Share Company and of said National Power & Light Company and are not public-utility companies within the meaning of the Act, but are engaged in the businesses respectively set forth opposite their names:

Name.	State of Organization.	Nature of Business.
Capitan Corporation	Tennessee	Real estate
Easton Transit Company	Pennsylvania	Ownership and leasing of transportation property
Easton and South Bethlehem Transportation Company	Pennsylvania	Transportation
Freemansburg Land Company	Pennsylvania	Real estate

Name.	State of Organization.	Nature of Business.
Allentown Bridge Company	Pennsylvania	Toll bridge
Lehigh Valley Realty Company	Pennsylvania	Real estate
Lehigh Valley Transportation Company	Pennsylvania	Transportation
Norristown Transit Company	Pennsylvania	Ownership and leasing of transportation property
Hazle Township Water Company	Pennsylvania	Water
Hummelstown Water Supply Company	Pennsylvania	Water
North Branch Development Company	Pennsylvania	Natural gas
Pennsylvania Realty & Investment Company	Pennsylvania	Real estate and Investments
West Pittston-Exeter Railroad Company	Pennsylvania	Short-line railroad
Susquehanna Gas Company	Pennsylvania	Natural gas pipe line
South Texas Utilities Company	Texas	Water and Ice
Tennessee Public Service Company	Maine	In process of liquidation
Valley Railways	Pennsylvania	Ownership of non-utility assets
Wrightsville Water Supply Company	Pennsylvania	Water

35. As of December 31, 1938, unpaid cumulative dividends in arrears on preferred stocks of subsidiary companies of National Power & Light Company (other than Tennessee Public Service Company which is in process of liquidation) totaled $6,123,771.67, of which $5,835,433.33 was applicable to preferred stocks held by said National Power & Light Company. As of December 31, 1939, the amount of such unpaid cumulative dividends in arrears had increased by approximately 4 percent.

36. The consolidated assets of National Power & Light Company and its subsidiary companies are shown on the consolidated balance sheet as of December 31, 1938 at $583,370,009.85. As of the same date, the aggregate par, stated, or assigned value (in some cases based upon liquidating preferences, not including dividend arrearages, of senior classes of stock) of voting securities of the subsidiaries consolidated held by National Power

& Light Company was approximately $79,882,000 (pro forma to reflect liquidation of Lehigh Power Securities Corporation in 1939). In addition, said National Power & Light Company owned substantial amounts of other classes of securities of certain of its subsidiary companies.

V.

37. American & Foreign Power Company Inc., referred to in paragraph 4 above, a registered holding company, is a corporation organized under the laws of the State of Maine and maintains principal offices for the doing of business in the City of New York, State of New York.

38. As of December 31, 1938, the capitalization of said American & Foreign Power Company Inc. was as follows:

Type of Security.	Amount Outstanding.	Principal Amount, Par or Stated Value.
Funded debt	$111,500,000.00	$111,500,000.00
Preferred Stock ($7), Cumulative, No Par	478,995 shares	393,939,972.38
$6 Preferred Stock, Cumulative, No Par	387,025+ shares	
Second Preferred Stock, Series A ($7) Cumulative, No Par	2,599,611 shares	
Common Stock, No Par	2,073,738 shares	
Option Warrants (without expiration date) to purchase Common Stock	6,651,994+ warrants	
Allotment Certificates for Preferred Stock ($7)		480.00

The number of shares of each class of capital stock owned by Electric Bond and Share Company is stated in paragraph 6 above. As of December 31, 1938, Electric Bond and Share Company owned $40,300,000 prin-

cipal amount of the funded debt of American & Foreign Power Company Inc.

39. Each share of common stock of American & Foreign Power Company Inc. is entitled to one vote with respect to ordinary business of the corporation. The Preferred Stock ($7), the $6 Preferred Stock, and the Second Preferred Stock, Series A ($7), have no general voting power. The Preferred Stock ($7) and the $6 Preferred Stock have equal rank, prior to the Second Preferred Stock, Series A ($7), as to dividends and in liquidation, and have a liquidating value of $100 per share plus unpaid cumulative dividends. The Second Preferred Stock, Series A ($7), has a liquidating value of $100 per share plus unpaid cumulative dividends. As of December 31, 1938 unpaid cumulative dividends in arrears on the three classes of preferred stock totaled $189,851,035.85, representing approximately 7 years' requirements on the Preferred Stock ($7) and the $6 Preferred Stock, and approximately 8¼ years on the Second Preferred Stock, Series A ($7). The amount of such dividends in arrears has increased since December 31, 1938 by reason of the failure to declare or pay any dividends during the year 1939. No dividends have been paid on the Common stock since organization of the company in 1923.

40. Approximately 112 companies, of which 25 are incorporated under the laws of States of the United States or under the China Trade Act, are subsidiary companies of said American & Foreign Power Company Inc., and of Electric Bond and Share Company. Neither American & Foreign Power Company Inc. nor any of its subsidiary companies owns or operates any facilities used for the generation, transmission, or distribution of electric energy for sale within the United States,

or any facilities used for the distribution at retail of natural or manufactured gas for heat, light, or power within the United States. Approximately 81 subsidiary companies of American & Foreign Power Company Inc. and of Electric Bond and Share Company are public-utility companies in the countries of Argentina, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, India, Mexico, Panama, and Venezuela. The holding company system of American & Foreign Power Company Inc. through the medium of its various subsidiary companies is also engaged in various other businesses in said foreign countries.

41. Several of the subsidiary companies of American & Foreign Power Company Inc. themselves have subsidiary companies which are holding companies. The following subsidiary companies of American & Foreign Power Company Inc. and of Electric Bond and Share Company have outstanding securities which are held by investors within the United States:

Name	Place of Organization.
Central Mexico Light and Power Company	Maine
The Guanajuato Power and Electric Company	Colorado
Panama Power & Light Company	Florida
Far East Power Corporation	Delaware
Havana Electric & Utilities Company	Maine
Mexican Utilities Company	Maine
Mexicana Electric Companies, Inc.	Delaware
The Northern Mexico Power and Development Company, Limited	Canada

42. The Commission has partially exempted said American & Foreign Power Company Inc. from various provisions of the Act applicable to it as a subsidiary company of Electric Bond and Share Company, and has exempted certain subsidiary companies of said Ameri-

can & Foreign Power Company Inc. which are holding companies from all provisions of the Act which would require them to register as such, and has partially exempted all subsidiary companies of said American & Foreign Power Company, Inc. from various provisions of the Act applicable to them as subsidiary companies of Electric Bond and Share Company and American & Foreign Power Company Inc.

VI.

43. American Gas and Electric Company, referred to in paragraph 4 above, is a corporation organized under the laws of the State of New York, and maintains principal offices for the doing of business in the City of New York, State of New York. Approximately 26 companies are subsidiary companies of said American Gas and Electric Company. The holding company system of American Gas and Electric Company serves with electricity approximately 1,655 communities having an aggregate population of approximately 3,187,000, such communities being located in nine States of the United States. In addition to the proceedings pursuant to Section 2 (a) (8) of the Act, referred to in paragraph 4 above, proceedings are pending before the Commission, pursuant to a Notice of and Order for Hearing dated December 1, 1939 (Holding Company Act Release No. 1815, File Numbers 54-9 and 59-2), to determine issues arising under an application filed by said American Gas and Electric Company pursuant to Section 11 (e) of the Act and, in general, to determine the action, if any, which American Gas and Electric Company and its subsidiary companies shall be required to take in order to comply with the provisions of Section 11 (b) (1) and Section 11 (b) (2) of the Act relating to simplification of holding-company systems.

VII.

44. Ebasco Services Incorporated, referred to in paragraph 5 above, is a subsidiary service company, all of whose outstanding securities are owned by Electric Bond and Share Company. Said Ebasco Services Incorporated maintains principal offices for the doing of business in the City of New York, State of New York, and performs service, sales, and construction contracts for associate companies in the holding company system of Electric Bond and Share Company, but does not perform service, sales, or construction contracts for companies in the holding company system of American Gas and Electric Company.

VIII.

45. In addition to the subsidiary companies listed in paragraphs 4, 5, 13, 14, 23, 24, 33 and 34 above, and those referred to in paragraph 40 above, various inactive companies are subsidiary companies of Electric Bond and Share Company and of one of its subsidiary companies listed in paragraph 4 above. In addition, more than 10 percentum of the outstanding voting securities of certain other companies not listed in the above paragraphs are directly or indirectly owned, controlled, or held with power to vote, by certain of the subsidiary companies of Electric Bond and Share Company, but applications pursuant to Section 2 (a) (8) of the Act for orders declaring such companies not to be subsidiary companies of Electric Bond and Share Company or of such other company or companies are now pending before the Commission. Said Section 2 (a) (8) provides that the filing of an application thereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in the Act upon the ap-

plicant as a subsidiary company of a specified holding company until the Commission has acted upon such application. Rule U-3D-3 of the General Rules and Regulations under the Act provides that the filing of such an application in good faith shall also exempt any company which is a subsidiary company of an applicant, and which would not be a subsidiary company of the specified holding company under clause (A) of Section 2 (a) (8) if its relationships with such applicant were disregarded, from the obligations, duties and liabilities imposed by any provision of the Act or of the rules and regulations upon such company as a subsidiary company of such specified holding company, until the Commission has denied the application or has otherwise ordered.

IX.

And the Commission further having reasonable grounds to believe that:

46. The structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated.

47. Voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company.

48. Said Electric Bond and Share Company is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies.

X.

WHEREFORE IT IS ORDERED that the said Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power & Light Corporation, Utah Power & Light Company, National

Power & Light Company, American & Foreign Power Company Inc. and Ebasco Services Incorporated shall be made respondents herein, and that pursuant to Section 11 (b) (2) of the said Public Utility Holding Company Act of 1935 a hearing shall be held at the offices of the Securities and Exchange Commission, 1778 Pennsylvania Avenue, N.W., Washington, D. C., at 10 A.M. on the tenth day of June, 1940 (or such later date as the Commission may prior thereto fix by supplementary notice), to determine (1) whether the allegations of Parts I to IX hereof, inclusive, are true and accurate; (2) whether it is necessary to discontinue the existence of, or modify the corporate structure of, or redistribute the voting power among security holders of, said Electric Bond and Share Company or any of the other respondents herein; (3) what further action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, in order that each of the respondents herein which is a registered holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company, and (4) what further action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, to ensure that the corporate structure or continued existence of any of the respondents herein does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of the holding company system of Electric Bond and Share Company; and

It is further ordered that the Secretary of the Commission shall serve notice of the hearing aforesaid by mailing a copy of this order by registered mail to said Electric Bond and Share Company and to each of its subsidiary companies, aforementioned, which are respondents herein, such mailing to be made not less than thirty days prior to the date hereinbefore fixed as the date of hearing; and that

notice is hereby given of said hearing to the said respondents and to all other persons, including the security holders and consumers of the said respondents, the subsidiary companies of the said respondents, all States, municipalities and political subdivisions of States within which are located any of the utility assets of the Electric Bond and Share Company holding company system or under the laws of which any of the respondents or their subsidiary companies are incorporated, all State commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities, or other political subdivisions having jurisdiction over any of the respondents or their subsidiary companies or over any of the businesses, affairs or operations of any of them, and that such notice shall be given further by general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935. Further notice shall be given to all persons by publication in the Federal Register, not later than thirty days prior to the date hereinbefore fixed as the date of hearing, of a notice as follows:

NOTICE OF HEARING UNDER SECTION 11 (b) (2) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 WITH RESPECT TO THE HOLDING-COMPANY SYSTEM OF ELECTRIC BOND AND SHARE COMPANY.

Notice is hereby given that the Securities and Exchange Commission adopted an order on the 9th day of May, 1940 directing that a hearing pursuant to Section 11 (b) (2) of the Public Utility Holding Company Act of 1935 be held with respect of Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power & Light Corporation, Utah Power & Light Company, National Power & Light Company, Ameri-

can & Foreign Power Company Inc. and Ebasco Services Incorporated, hereinafter called the respondents, at the offices of the said Securities and Exchange Commission, 1778 Pennsylvania Avenue, N.W., Washington, D. C., at 10 A.M. on the tenth day of June, 1940 (or such later date as the Commission may prior thereto fix by supplementary notice).

Said order recites that it appears to the Commission that (a) the structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated; (b) voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company; and (c) said Electric Bond and Share Company is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies.

Said order further provides that the purpose of such hearing is to determine (1) whether the allegations of Parts I to IX, inclusive, of said order are true and accurate; (2) whether it is necessary to discontinue the existence of, or modify the corporate structure of, or redistribute the voting power among security holders of, said Electric Bond and Share Company, or any of the other respondents in said proceedings; (3) what further action, if any, is necessary and shall be required to be taken by the said respondents, or any of them, in order that each of the said respondents which is a registered holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company; and (4) what further action, if any, is necessary and shall be required to be taken by the said respondents, or any of them, to ensure that the corporate structure or continued existence of any of the said respondents does not unduly or unnecessarily complicate the struc-

ture, or unfairly or inequitably distribute voting power among security holders, of the holding company system of Electric Bond and Share Company.

Reference is made to said notice and order for hearing for a more complete statement of the various matters to be determined at said hearing, and a copy of said notice and order for hearing is on file and open to public inspection at the offices of said Securities and Exchange Commission in Washington, D. C., and in each of the Regional Offices of said Securities and Exchange Commission, and a copy of said notice and order for hearing may be had upon written request to the Secretary of said Commission, and said notice and order for hearing is hereby made a part of this notice as if more fully herein set forth at length.

Notice of the aforesaid hearing is particularly given to each of the aforesaid respondents, Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power & Light Corporation, Utah Power & Light Company, National Power & Light Company, American & Foreign Power Company Inc., and Ebasco Services Incorporated, and to all other persons, including the security holders and consumers of the said respondents, the subsidiary companies of the said respondents, all States, municipalities, and political subdivisions of States within which are located any of the utility assets owned or operated by the Electric Bond and Share Company holding company system or under the laws of which any of the respondents or their subsidiary companies are incorporated, all State Commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of the respondents or their subsidiary companies or over any of the businesses, affairs or operations of any of them.

Said order further provides that any person proposing

to intervene in said proceedings shall file with the Secretary of the Securities and Exchange Commission on or before the third day of June, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice of the said Securities and Exchange Commission.

By order of the Securities and Exchange Commission this ninth day of May, 1940.

FRANCIS P. BRASSOR, *Secretary.*

[SEAL]

It is further ordered that any person proposing to intervene in these proceedings shall file with the Secretary of the Commission on or before the third day of June, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice.

By the Commission.

FRANCIS P. BRASSOR, *Secretary.*

[Document No. 4.]

Received for filing May 31, 1940.

United States of America

Before The

Securities and Exchange Commission.

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
American & Foreign Power Company, Inc.,
Ebasco Services Incorporated,

Respondents.

File No. 59-12.

APPLICATION WITH RESPECT TO NOTICE OF AND ORDER FOR HEARING PURSUANT TO SECTION 11 (b) (2) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The respondents named in the notice of and order for hearing dated the ninth day of May, 1940, in the above entitled matter (hereinafter referred to as the "notice and order"), by their attorneys, Simpson Thacher & Bartlett and Reid & Priest, respectfully show:

(1) The notice and order provides for a hearing thereon "at 10 A.M. on the tenth day of June, 1940 (or such later date as the Commission may prior thereto fix by supplementary notice), * * *." The purposes for which said hearing is to be held, as stated in the notice and order, are

"to determine (1) whether the allegations of Parts I to IX hereof, inclusive, are true and accurate; (2)

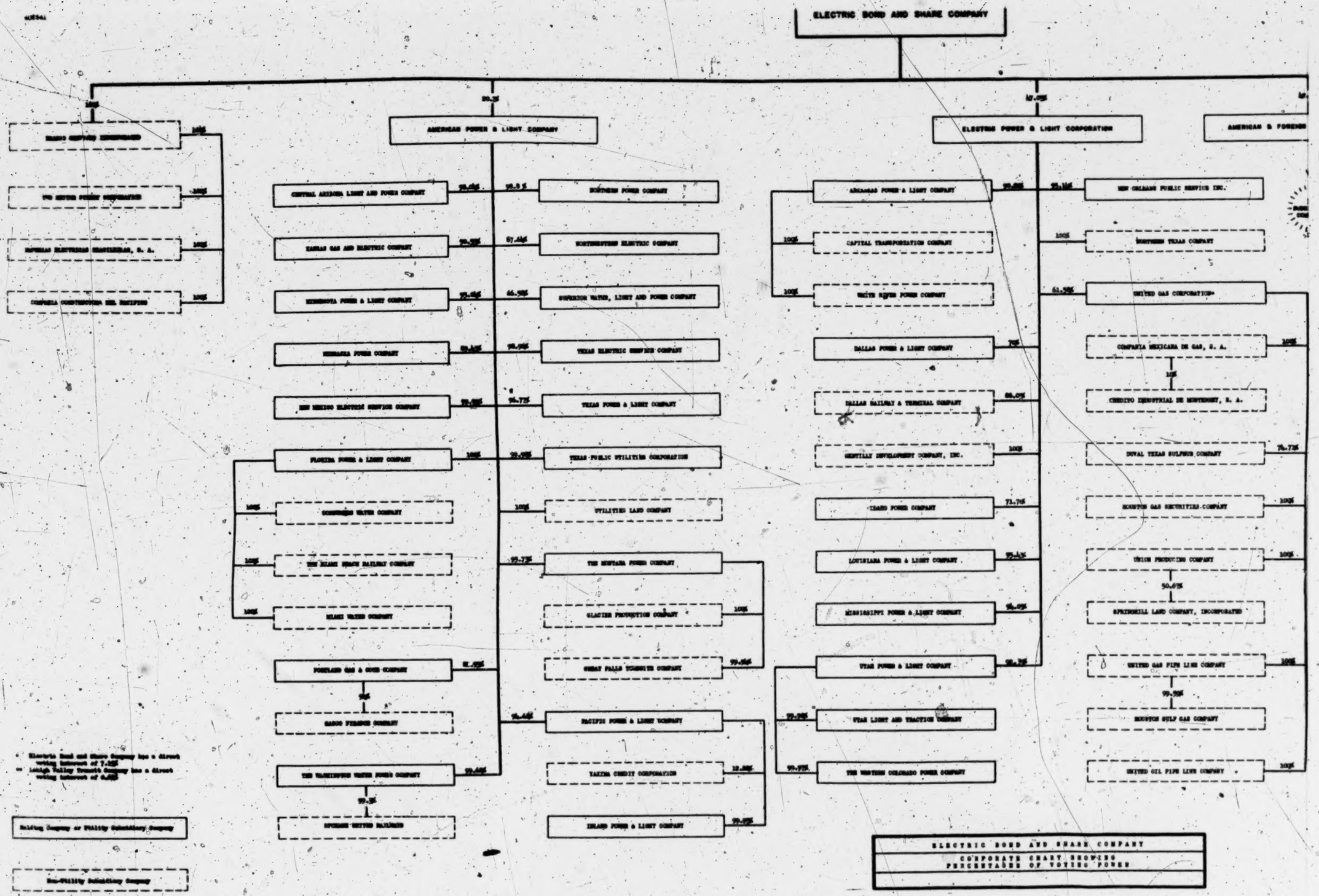
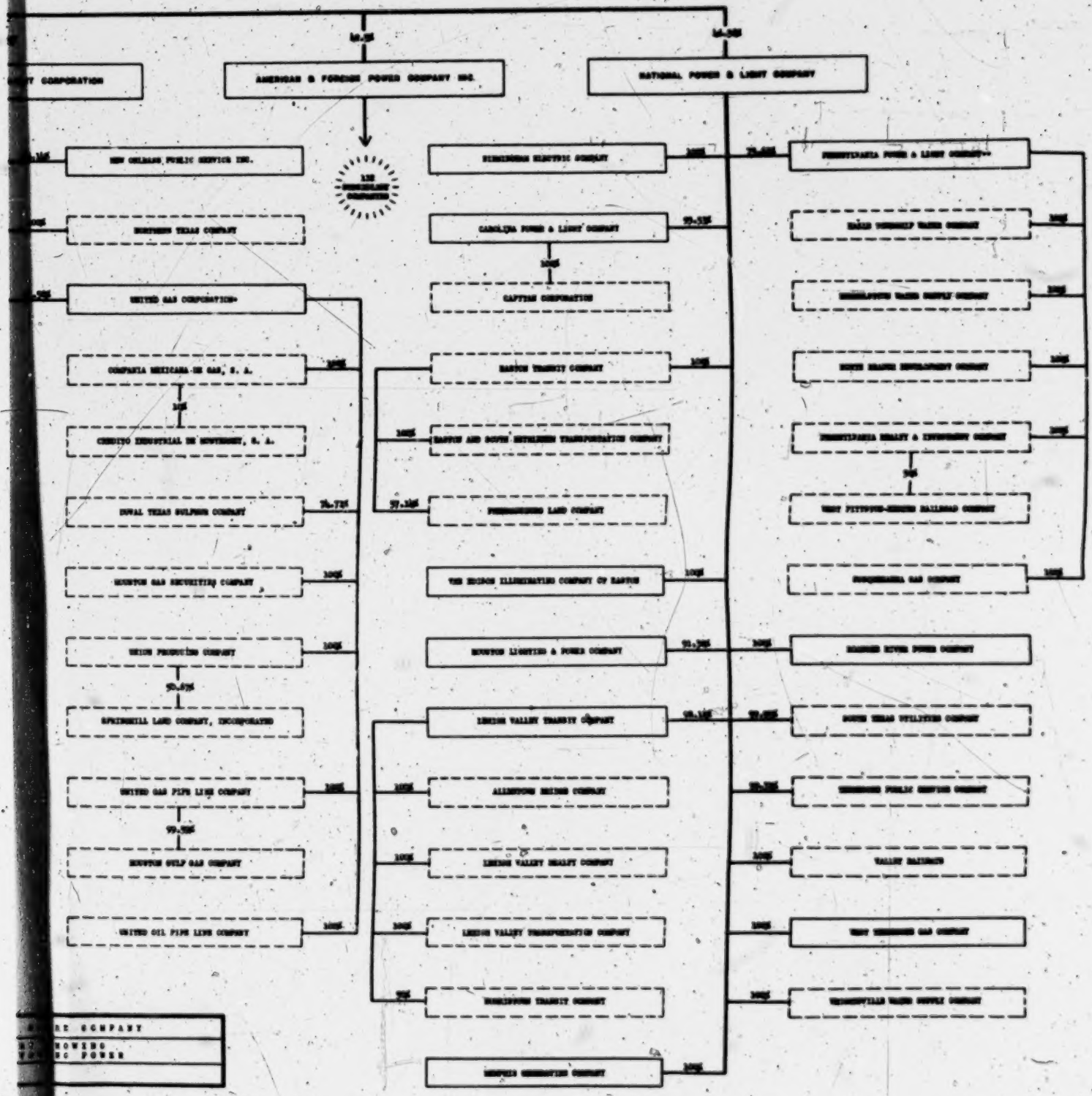

ELECTRIC BOND AND SHARE COMPANY
AMERICAN POWER & LIGHT COMPANY
ELECTRIC POWER & LIGHT CORPORATION
CENTRAL ARIZONA LIGHT AND POWER COMPANY
TAMPA GAS AND ELECTRIC COMPANY
MINNESOTA POWER & LIGHT COMPANY
NEBRASKA POWER COMPANY
NEW MEXICO ELECTRIC SERVICE COMPANY
FLORIDA POWER & LIGHT COMPANY
COMMERCIAL WATER COMPANY
THE SAINT MARYS BAILWAY COMPANY
SAINT WATER COMPANY
PORTLAND GAS & COKE COMPANY
SANDY FERRIES COMPANY
THE WASHINGTON WATER POWER COMPANY
SPOKANE UNITED RAILWAYS
NORTHERN POWER COMPANY
NORTHWESTERN ELECTRIC COMPANY
SUPERIOR WATER, LIGHT AND POWER COMPANY
TEXAS ELECTRIC SERVICE COMPANY
TEXAS POWER & LIGHT COMPANY
TEXAS PUBLIC UTILITIES CORPORATION
UTILITIES LAND COMPANY
THE MONTANA POWER COMPANY
GLACIER PRODUCTION COMPANY
GREAT FALLS TRIBUNE COMPANY
PACIFIC POWER & LIGHT COMPANY
YAKIMA CREDIT CORPORATION
INLAND POWER & LIGHT COMPANY
ARKANSAS POWER & LIGHT COMPANY
CAPITAL TRANSPORTATION COMPANY
WHITE RIVER POWER COMPANY
DALLAS POWER & LIGHT COMPANY
DALLAS RAILWAY & TERMINAL COMPANY
GENTILLY DEVELOPMENT COMPANY, INC.
IDAHO POWER COMPANY
LOUISIANA POWER & LIGHT COMPANY
MISSISSIPPI POWER & LIGHT COMPANY
TEXAS POWER & LIGHT COMPANY
TEXAS LIGHT AND TRACTION COMPANY
THE WESTERN COLORADO POWER COMPANY
NEW ORLEANS PUBLIC SERVICE INC.
NORTHERN TEXAS COMPANY
UNITED GAS CORPORATION*
COMPANIA MEXICANA DE GAS, S. A.
CREDITO INDUSTRIAL DE MONTERREY, S. A.
DUVAL TEXAS SULPHUR COMPANY
HOUSTON GAS SECURITIES COMPANY
UNION PRODUCING COMPANY
SPRINGHILL LAND COMPANY, INCORPORATED
UNITED GAS PIPE LINE COMPANY
HOUSTON GULF GAS COMPANY
UNITED OIL PIPE LINE COMPANY
* Electric Bond and Share Company has a direct voting interest of 7.3%
** Lehigh Valley Transit Company has a direct voting interest of 0.5%
Holding Company or Utility Subsidiary Company
Non-Utility Subsidiary Company
ELECTRIC BOND AND SHARE COMPANY
CORPORATE CHART SHOWING PERCENTAGES OF VOTING POWER

EXHIBIT A


AMERICAN & FOREIGN POWER COMPANY INC.
NATIONAL POWER & LIGHT COMPANY
NEW ORLEANS PUBLIC SERVICE INC.
132 SHAREHOLDERS (APPROX.)
BIRMINGHAM ELECTRIC COMPANY
PENNSYLVANIA POWER & LIGHT COMPANY**
NORTHERN TEXAS COMPANY
CAROLINA POWER & LIGHT COMPANY
99.53%
MAIN TURNPIKE WATER COMPANY
UNITED GAS CORPORATION*
CAPTAIN CORPORATION
SUSQUEHANNA WATER SUPPLY COMPANY
COMPANIA MEXICANA DE GAS, S. A.
EASTON TRANSIT COMPANY
SOUTH MAHON DEVELOPMENT COMPANY
CREDITO INDUSTRIAL DE MONTERREY, S. A.
EASTON AND SOUTH BETHLEHEM TRANSPORTATION COMPANY
PENNSYLVANIA REALTY & INVESTMENT COMPANY
DUVAL TEXAS SULPHUR COMPANY
76.72%
PENNSYLVANIA LAND COMPANY
97.16%
WEST PITTSTON-EXETER RAILROAD COMPANY
HOUSTON GAS RECEIVING COMPANY
THE LEHIGH ILLUMINATING COMPANY OF EASTON
SUSQUEHANNA GAS COMPANY
LEHIGH PRODUCING COMPANY
HOUSTON LIGHTING & POWER COMPANY
91.39%
HARRIS RIVER POWER COMPANY
50.67%
SPRINGHILL LAND COMPANY, INCORPORATED
LEHIGH VALLEY TRANSIT COMPANY
99.14%
99.99%
SOUTH TEXAS UTILITIES COMPANY
UNITED GAS PIPE LINE COMPANY
ALLENTOWN HEINE COMPANY
99.79%
99.99%
HARRISBURG PUBLIC SERVICE COMPANY
HOUSTON GULF GAS COMPANY
LEHIGH VALLEY REALTY COMPANY
VALLEY RAILWAYS
UNITED OIL PIPE LINE COMPANY
LEHIGH VALLEY TRANSPORTATION COMPANY
WEST SUSQUEHANNA GAS COMPANY
WORLDWIDE TRANSIT COMPANY
WILKESVILLE WATER SUPPLY COMPANY
MEMPHIS GENERATION COMPANY
RE COMPANY
HOUSTON
DC POWER

whether it is necessary to discontinue the existence of, or modify the corporate structure of, or redistribute the voting power among security holders of, said Electric Bond and Share Company or any of the other respondents herein; (3) what further action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, in order that each of the respondents herein which is a registered holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company, and (4) what further action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, to ensure that the corporate structure or continued existence of any of the respondents herein does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of the holding company system of Electric Bond and Share Company."

The allegations of said Parts I to IX comprise forty-eight separate paragraphs containing factual allegations as to the corporate structure of the respondents, their intercorporate relationships and fragmentary allegations with respect to the financial position of the Respondents and their subsidiaries, as well as allegations that

"The structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated." (Par. 46)

"Voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company." (Par. 47)

"Said Electric Bond and Share Company is a holding company with respect to certain subsidiary com-

panies, which themselves have subsidiary companies which are holding companies." (Par. 48)

It is obvious from the nature of the proceeding and from the allegations above quoted that the matters to be dealt with at the hearing are of vital import to the respondents and their subsidiaries, as well as to the hundreds of thousands of investors in securities of companies in the Electric Bond and Share Company system and the millions of consumers presently receiving necessary public utility service from the operating companies in said system. In the circumstances, respondents believe, first, that they should be given adequate time not only to check and verify the numerous factual allegations contained in the order, but also to develop and correlate for presentation all other facts having a bearing upon the problems and issues presented by the notice and order; and second, that the problems and issues raised by the content of the notice and order, and especially the allegations of paragraphs 46 to 48, inclusive, above quoted, should be approached in proper sequence with respect to other and related proceedings now pending before the Commission, and involving the relationships of respondents and the property of and operations within the Electric Bond and Share Company system. It is with these factors in mind that this application is made by respondents.

(2) The notice and order, although dated May 9, 1940 was not received by respondents until Saturday, May 11, 1940, on which date respondents' offices were closed as respondents operate on a five day week. Consequently, the first opportunity for respondents and their counsel to consider the content of said notice and order was May 13, 1940, or only nineteen regular working days before the date fixed for hearing. Starting Monday, May 13, respondents and their counsel, with a staff augmented for the purpose, have been diligently engaged in preparation for the hearing. It

is evident from the progress made to date that neither respondents nor their counsel can be adequately prepared for a hearing on June 10, or for a period of several weeks thereafter, even with the utmost of diligence. Respondents point out that the matters involved in the notice and order require the assembling and correlating of a vast amount of historical information dealing with the corporate structure of respondents, predecessor corporations and subsidiaries, as well as an extensive examination of the laws pursuant to which their securities were issued and are outstanding. In this connection it should be borne in mind that the existence of the Electric Bond and Share Company system extends backwards for over thirty-five years, and consequently much information relevant to any proceeding dealing with its structure is not readily available. Respondents also point out that a considerable portion of their respective staffs and of the time of their counsel is engaged in preparation for hearing on the problems and issues raised by the notice and order dated February 28, 1940, pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 (File No. 59-3).

(3) The problem of collecting and correlating information and preparing for a hearing is now complicated in a manner and to an extent not heretofore contemplated by the urgent demands on the staffs of respondents and their subsidiaries in connection with expected problems concerning the national defense and in making sure that their companies are prepared for all foreseeable eventualities which may locally arise in regard thereto. A number of executives and others who will be required as witnesses in connection with this proceeding, or whose time, in part at least, is required in the preparation for hearing are specially qualified to give attention now to the studies and other work which utilities are doing, and should continue to do, in connection with local preparations for the national defense. It is not

in the public interest, or in the interest of the companies, consumers or security holders of the Electric Bond and Share Company system, that this work should in any way be hampered or delayed, as may be the case if respondents are required to prepare for and participate in an early hearing in this proceeding.

(4) In addition to the foregoing considerations, paragraph 40 of the notice and order states that there are approximately 112 subsidiary companies of American & Foreign Power Company Inc., of which 81 are public utility companies in 13 named foreign countries. In so far as the system of American & Foreign Power Company, Inc., may be involved in this proceeding, the difficulties of assembling and correlating necessary information for the hearing is greatly increased, especially under present world conditions which have already seriously affected the foreign operation and drastically disturbed the foreign exchange situation.

(5) Respondents call attention to the fact that although from two and one-half to three months have elapsed since the issuance by the Commission of its "show cause" orders to the major holding company systems pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935, as yet no hearings have been held aside from hearings dealing with special or clarifying points, and no further hearings with respect to such proceedings are scheduled to be held prior to June 10, 1940. By comparison the time allowed respondents in these proceedings is far too short.

(6) As stated by these respondents in the applications and answer to which they were parties, and which were filed in the integration proceedings (File No. 59-3), they consider the determination of the application of American Gas and Electric Company for an order declaring it not to be a subsidiary of Electric Bond and Share Company of primary importance in determining the problems and issues raised by Section 11(b)(1) of the Public Utility Holding Company

Act of 1935. The same considerations are applicable to these proceedings, and respondents point out that a hearing on said application of American Gas and Electric Company has been fixed for June 12, 1940, and will be presumably disposed of by the Commission within the near future. Respondents therefore take the position that orderly procedure would dictate that hearings in the present proceedings should not be commenced until such disposition.

(7) Respondents contend that an orderly approach to the solution of the problems presented by Section 11(b) of the Public Utility Holding Company Act of 1935 would further dictate that the integration problems raised by Section 11(b)(1) be disposed of prior to consideration of the problems raised by Section 11 (b) (2), since it is difficult, if not impossible, to perceive how the problems of corporate structure and voting power can be practicably or profitably examined and considered until the problems of integration raised by Section 11(b)(1) have been examined, considered and determined including the determination of how many, and what, "integrated public utility systems" may continue to be controlled by Electric Bond and Share Company and the other respondent holding companies. The determination of what corporations shall continue to exist, what the corporate structure may be, and how voting power should be distributed (assuming, without conceding, the constitutionality of Sections 11(b)(1) and 11(b)(2) of the Act), must of necessity be dependent upon the prior determination of such underlying problems. Any other procedure would be contrary to the plain intent of the Act, as evidenced not only by its objectives and structure, but also by the sequence of Sections 11(b)(1) and 11(b)(2).

(8) In making this application, respondents expressly reserve and refuse to waive any constitutional or legal rights, and expressly reserve the right to contest the constitutionality of any provision of the Act as applied to them, or of

any rule, regulation or order now or hereafter made or purported to be made thereunder, and this application is made in reliance on Rule 4, as amended, of the Rules and Regulations of the Commission issued pursuant to Section 20 of the Act. Moreover, respondents at this time expressly allege that many of the provisions of the Act, including specifically Sections 11 and 18 thereof, are unconstitutional and void and confer no right upon the Commission and impose no duty upon the respondents for the reasons, among others, that same (a) are not a regulation of commerce, (b) their enforcement will constitute deprivation of property without due process of law, and (c) constitute an unlawful delegation of legislative authority.

Wherefore the respondents, for the reasons aforesaid, respectfully make application to the Commission for an order either (1) withdrawing the notice and order or (2) postponing the hearing to a date to be fixed after the final determination of the issues raised by said application filed by American Gas and Electric Company pursuant to Section 2(a)(8) of the Public Utility Holding Company Act of 1935, and after determination of the proceedings brought pursuant to Section 11(b)(1) of said Act (File No. 59-3) and/or grant such other and further relief in the premises as may be just and proper.

Dated, New York, N.Y., May 29, 1940.

SIMPSON THACHER & BARTLETT,
by JOHN F. MACLANE,
A member of said firm.
Office and Post Office Address,
No. 120 Broadway, New York, N.Y.

REID & PRIEST,
by FRANK A. REID,
A member of said firm.
Office and Post Office Address,
No. Two Rector Street, New York, N.Y.
Attorneys for Respondents.

[Document No. 5.]

Mailed for service June 8, 1940

Securities and Exchange Commission

Washington

Reg. No. Docket Unit 977649-977653

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
American & Foreign Power Company, Inc.,
Ebasco Services Incorporated,
Respondents.

File No. 59-12.

MEMORANDUM OPINION.

This proceeding was instituted under Section 11(b)(2) of the Public Utility Holding Company Act of 1935 by notice and order dated May 9, 1940. Respondents have filed an application requesting withdrawal of the notice and order or postponement of the hearing to a date to be fixed after final determination of the pending application of American Gas and Electric Company to be declared not a subsidiary of Electric Bond and Share Company, and after determination of the proceedings under Section 11(b)(1) (File No. 59-3). This application also urges that for various reasons the time elapsing between the issuance of the notice and order and the date of hearing is inadequate. We have examined the various reasons advanced in the application and are unable to find adequate ground for the requested delay. The date of hearing will be postponed for one week to June 17, 1940, and the hearing will be confined initially to the sole issue of whether it is necessary to discontinue

the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American & Foreign Power Company, Inc., or any of them, in order to ensure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting power shall not be unfairly or inequitably distributed among the security holders in that system. Jurisdiction will be reserved with respect to all other issues described in the notice of and order for hearing.

An appropriate order will issue.

By the Commission, Commissioner Henderson being absent and not participating herein.

FRANCIS P. BRASSOR, *Secretary.*

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION.

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the seventh day of June, A. D., 1940.

In the Matter of

ELECTRIC BOND AND SHARE COMPANY,
AMERICAN POWER & LIGHT COMPANY,
PACIFIC POWER & LIGHT COMPANY,
ELECTRIC POWER & LIGHT CORPORATION,
UTAH POWER & LIGHT COMPANY,
NATIONAL POWER & LIGHT COMPANY,
AMERICAN & FOREIGN POWER COMPANY, INC.,
EBASCO SERVICES INCORPORATED,
Respondents.

File No. 59-12.

ORDER.

The Commission having issued its notice of and order for hearing in the within matter pursuant to Section 11 (b) (2)

of the Public Utility Holding Company Act of 1935; said notice of and order for hearing having specified the tenth day of June 1940 as the date of hearing; respondents having filed on the thirty-first day of May 1940 their "Application with Respect to Notice of and Order for Hearing pursuant to Section 11(b)(2) of the Public Utility Holding Company Act of 1935"; and the Commission having duly considered said application and having filed its memorandum opinion in connection therewith:

It is ordered (1) that the date of hearing be, and the same hereby is, postponed for one week until the seventeenth day of June 1940; (2) that such hearing shall be limited initially to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American & Foreign Power Company, Inc., or any of them, in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting power shall not be unfairly or inequitably distributed among security holders of such system; jurisdiction being reserved to consider and dispose of all other issues presented by the notice of and order for hearing herein in appropriate manner; and (3) that in all other respects the said application filed by respondents be, and the same hereby is, denied.

By the Commission.

FRANCIS P. BRASSOR, *Secretary.*

[7]

TRANSCRIPT OF TESTIMONY.

BEFORE THE SECURITIES AND EXCHANGE COMMISSION.

File No. 59-12

In the Matter of

ELECTRIC BOND AND SHARE COMPANY ET AL.

Hearing pursuant to Section 11(b)(2) of the Public Utility Holding Company Act of 1935.

Hearing Room 1103,
Securities and Exchange Commission Building,
Washington, D. C.—Tuesday, June 18, 1940.

Met pursuant to adjournment, at 10 o'clock A.M.

Before: JAMES G. EWELL, Examiner.

Appearances:

MILTON H. COHEN, Esquire, and
ALFRED BERMAN, Esquire,
Counsel for the Commission.

JOHN F. MACLANE, Esquire, of Simpson, Thacher & Bartlett, 120 Broadway, New York City and
FRANK A. REID, Esquire, of Reid & Priest, 2 Rector Street, New York City.
Counsel for the Applicant.

[8]

Proceedings.

The Examiner: The hearing will come to order, please. I will reopen the hearing at this time in the matter of Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power

NOTE: Figures in italics enclosed in brackets are the page numbers of original record.

& Light Corporation, Utah Power & Light Company, National Power & Light Company, American and Foreign Power Company, and Ebasco Services, Inc. This hearing is in pursuance of Section 11(b)(2) of the Public Utility Holding Company Act of 1935 and was originally set for June 10th, and thereafter postponed by order of the Commission to June 17 at which time the hearing was opened as scheduled at 10 A.M. and remained in session until 10:45 A.M., at which time it was continued at the request of the respondents on motion of counsel for the Commission made in their behalf. Are the parties ready to proceed at this time?

Mr. Berman: We are, Mr. Examiner.

The Examiner: May we have the appearances noted, please?

Mr. Berman: Milton H. Cohen and Alfred Berman for the Securities and Exchange Commission.

The Examiner: And for the respondents?

Mr. MacLane: Messrs. John F. MacLane and Frank A. Reid, represent their respective law firms of Simpson, [9] Thacher & Bartlett, and Reid & Priest.

In entering our appearances I believe it has been customary here, although I am not positive, to make the general reservations of constitutional and legal rights prescribed by Rule 11-4 of the Commission, which reservations are fully set forth in the answer filed by these respondents on June 15, 1940. I assume, Mr. Cohen, that that answer is part of the record in this case?

Mr. Cohen: It is not a part of the record but can be introduced on your behalf.

The Examiner: Are you referring to Rule 4 of the Rules of Practice?

Mr. MacLane: It is Rule 4 of the Rules and Regulations of the Securities and Exchange Commission promulgated pursuant to Section 20 of the Public Utility Holding Com-

pany Act, and it is stated in our answer. Then, I understand, Mr. Cohen, from your statement, that the answer of these respondents signed by Simpson, Thacher & Bartlett by myself, and Reid & Priest by Mr. Reid, which was tendered to you or filed with the Commission on June 5, 1940, in this case, File No. 59-12, may now be deemed as regularly filed and as a part of the record in this proceeding?

Mr. Cohen: Off the record.

[*10*] [Discussion off the record.]

Mr. MacLane: At what the Commission deems the appropriate time, I presume this answer may be filed as part of our case and in the statement now made of the appearances we reserve the reservations stated in that answer.

The Examiner: May I ask you to state a little more specifically for whom you appear? There are a large number of parties who were given notice in this proceeding although I believe the Commission's order of June 7th has made some limitation as to the scope of this particular hearing.

Mr. MacLane: We appear here for all the respondents named in the original notice and order, to wit, the Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power & Light Corporation, Utah Power & Light Company, National Power & Light Company, American and Foreign Power, Inc. and Ebasco Services, Inc. Now, I am familiar with the order of limitation and I understand that these proceedings will be confined to the companies specified in that order. However, we had drafted our answer before that order of limitation, and the notice and order still remains as the formal document initiating this proceeding, and [*11*] it seemed to us appropriate to enter our appearance for all these companies so as to conform with our answer and the original notice and order, even though our appearance on behalf of some of them may not be directly involved at this stage in the proceeding. I assume, from what I have heard,

that an order of dismissal of the American and Foreign has been made, and when formally notified of that I shall withdraw my appearance for the American and Foreign Power.

Mr. Berman: That will be done.

The Examiner: Is the Commission ready to proceed?

Mr. Berman: It is. May I say, Mr. Examiner, that this is a hearing with respect to Electric Bond and Share and certain other respondents named in the Commission's order under Section 11(b)(2) of the Public Utility Holding Company Act of 1935. The Commission in its original order and notice of hearing stated that: It appearing to the Commission, and it having reasonable grounds to believe that the structure of the holding company system of Electric Bond and Share Company is unduly and unnecessarily complicated, the voting power is unfairly and inequitably distributed among security holders of the holding company system of such Electric Bond and Share Company, and that said Electric Bond and Share Company is a holding company with respect [*12*] to certain subsidiary companies which themselves have subsidiary companies which are holding companies, ordered this hearing in which the respondents named above were made respondents herein for the purpose of determining:

(1) Whether the allegations of Parts 1 to 9 of the Commission's notice of and order for hearing are true and accurate;

(2) Whether it is necessary to discontinue the existence or modify the corporate structure of or redistribute the voting power among securities holders of said Electric Bond and Share Company, or any of the other respondents herein; and

(3) What further action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, in order that each of the respondents herein which is

a registered holding company, shall cease to be a holding company with respect to each of its subsidiary companies, which itself has a holding company which is a holding company; and

(4) What further action, if any, is necessary and shall be required to be taken by the respondents herein or any of them, to insure that the corporate structure or continued existence of any of the respondents herein does not unduly or unnecessarily complicate the structure or unfairly or inequitably distribute voting power among [*13*] security holders of the holding company system of Electric Bond and Share Company.

Further in its notice of hearing the Commission said that:

> "Any person proposing to intervene in said proceedings shall file with the Secretary of the Securities and Exchange Commission on or before the third day of June, 1940, his request or application therefor, as provided by Rule 17 of the Rules of Practice of said Securities and Exchange Commission."

I now ask you, Mr. Examiner, if you will inquire whether there are any members of the public present or any interested persons or members of state commissions, or any other persons wishing to enter an appearance or be heard in this proceeding.

The Examiner: I so inquire. The record will show there is no response. The record will further show that I made a similar inquiry during the opening session yesterday, and no request was made. The record will further show that I request the hearing room clerk to refer any inquiries by any persons during the course of the day by any persons, directly to myself, and this morning I was informed by the hearing room clerk that no inquiries were made except by two [*14*] people who represented themselves as spectators and who did not give their names and who were notified by

the said hearing room clerk that the hearing was resumed this morning at 10 o'clock.

Mr. Berman: I wish to state for the record, Mr. Examiner, I wish to ask counsel for the respondents to join with me in the following stipulation if they see fit: That all documents offered as exhibits are offered subject to the following conditions: (a) Documents which are a part of the original files of the Commission shall not be attached to nor be copied into the transcript of the record; (b) In the event that copies of such documents are required for any Court review or proceeding, certified or photostatic copies of such documents may be supplied in lieu of the originals. Will counsel so stipulate?

Mr. MacLane: Yes, sir. May I ask a question in connection with (b)? These documents, I assume, some of them at least, may be very voluminous and only relatively small parts may be relevant. Is it your thought that the entire document be photostated regardless of the relevance or irrelevance of a large part of this?

Mr. Berman: That is a point we are very pleased to [15] take up and we will be glad to stipulate that in the event of any court review or any other proceeding in connection with the present proceeding, that only such parts of the documents put into evidence as to which we are making this stipulation, need be printed as are agreed by the parties to be material. Is that satisfactory to you?

Mr. MacLane: I don't want to be ultra-technical, but the parties may differ as to what parts are material, and I assume you would want to be at liberty to put into the record all parts which you deemed material and, we might wish to put in some parts which you did not deem material.

The Examiner: Might not the Examiner assist in such case?

Mr. Berman: Would it be satisfactory to you if the decision were made by the Examiner?

Mr. MacLane: I think so, generally speaking. It is rather difficult to visualize the condition which might arise.

The Examiner: I might say that that decision will be made by the Examiner.

Mr. MacLane: It has been suggested that perhaps the appropriate stipulation might be that there should be put in such portion which either party deemed to be relevant and [16] necessary to an adequate court review. For example, if this were a proceeding in a lower court, and we offered a document in evidence which was objected to and the objection was sustained, we would nevertheless have the right to have included within the record that part of the document, or that document which has been so objected to, so that the reviewing court could determine whether it was material, and whether it should be considered or not.

The Examiner: I would say that is entirely proper and I would allow that as an offer of proof.

Mr. MacLane: I don't think we are going to have any practical difficulty when we get to it, Mr. Examiner, but I want to be sure about what I am stipulating.

The Examiner: There will be no question about that. On the other hand, the question as to whether or not it will be admitted at this stage of the proceeding rests in my discretion.

Mr. MacLane: I understand that.

Mr. Berman: I offer in evidence, Mr. Examiner, as Commission's Exhibit 1, notice of and order for hearing entered May 9, 1940, in the matter of Electric Bond and Share Company, American Power & Light Company, Pacific Power & Light Company, Electric Power & Light Corporation, Utah Power & Light Company, National Power & Light Company, [17] American and Foreign Power Company, Inc., Ebasco Services, Inc., fixing a hearing before the Commission for the tenth day of June, 1940.

Mr. MacLane: No objection.

The Examiner: Received without objection.

[The document referred to was thereupon received in evidence as Commission's Exhibit 1.]

Mr. Berman: It is to be noted that page 18 of the notice of and order for hearing states: "That notice is particularly given to each of the named respondents and to all other persons including the security holders and consumers of the said respondents, the subsidiary companies of the said respondents, all states, municipalities and political subdivisions of states within which are confined any of the utility assets owned and operated by the Electric Bond and Share Holding company system, or under the laws of which any of the respondents or their subsidiary companies are incorporated, all state commissions, state securities commissions and all agencies, authorities or instrumentalities of one or more states, municipalities or other political subdivisions having jurisdiction over any of the respondents or their subsidiary companies or over any of the businesses, affairs or operations of any of them." In this connection, Mr. Examiner, I wish to state [18] that on May 24, 1940, the Commission issued an order granting the request of the Wisconsin Public Service Commission to intervene in the present proceeding, and on June 17, 1940, the State of Maine filed a request for permission to intervene, as to which because of the recentness of the filing, the Commission has not yet taken definite action.

The Examiner: Have any other requests been made or have any other communications or communications from other persons claiming to be interested, been received by the Commission expressing a desire to be heard in connection with this matter?

Mr. Berman: We have received from time to time several communications, I believe, Mr. Examiner, none of which have been construed as formal requests to intervene or even to be heard. There was a letter from the Railroad Commis-

sion of Texas, I believe, raising some questions with respect to how the proceeding would affect certain utilities in their state, and upon reply we heard no further from that body. A letter was received from a gentleman by the name of Barksdale, I believe, who described himself as a security holder of Electric Bond and Share, asking whether he could be heard or could intervene. [*19*] We replied forwarding the rules of the Commission and asking him to advise us whether he wished to be heard or wished to intervene formally, and up to this time we have not yet received a reply from Mr. Barksdale. Should we receive such a reply we will communicate it to you at once.

The Examiner: How long ago was that?

Mr. Berman: Our reply was sent fully a week ago, perhaps more than a week ago.

The Examiner: Where does he reside?

Mr. Berman: In Virginia.

The Examiner: It is now 10:30. I ask at this time again if any person is present in the room wishing to be heard in connection with this matter. The record will show there is no response.

Mr. Berman: I offer in evidence a sheet of paper bearing a number of post office return receipts for registered mail, duly signed, acknowledging the receipt by each of the respondents and their counsel, of copies of the notice of and order for hearing in this proceeding.

Mr. MacLane: No objection. If it will be any accommodation we will be glad to admit it without an offer of the exhibit.

The Examiner: There is no question as to the sufficiency of notices regarding these proceedings on [*20*] behalf of any of the respondents named in the order?

Mr. MacLane: No, sir.

The Examiner: Do you withdraw those Mr. Berman?

Mr. Berman: I offered them and they were marked.

The Examiner: Admitted without objection.

[The document referred to was thereupon received in evidence as Commission's Exhibit 2.]

Mr. Berman: I wish to offer in evidence a copy of the original press release, Holding Company Act Release No. 2051, released to the press by the Commission's press room prior to May 10, 1940, giving public notice of the hearing in this matter originally set for June 10. In addition, copies of this release were sent to all those on the Commission mailing list of newspapers, numbering approximately 200, the Commission's list of regulatory authorities numbering approximately 200, and the Commission's general mailing list numbering approximately 4,200.

Mr. MacLane: This is offered, I assume, simply to show that it gave publicity to the fact of the hearing?

Mr. Berman: That is so, not as factual proof of anything except that said notice was given.

Mr. MacLane: No objection on that ground.

The Examiner: Received in evidence.

[21] [The document referred to was thereupon received in evidence as Commission's Exhibit 3.]

The Examiner: This being a public hearing I think the record ought to show that at the time the Examiner inquired regarding appearances by the public, there were approximately 20 people present in the room in addition to counsel.

Mr. Berman: I wish to offer in evidence documents indicating that copies of the order of and notice for hearing were mailed to the mayors of approximately 100 communities located in 21 states in which the respondents or their subsidiaries conduct all or part of their operations.

Mr. MacLane: No objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit 4.]

Mr. Berman: I wish to state for the record that a copy of the notice of and order for hearing as scheduled for June 10th, was published in the Federal Register of May 7, 1940, Volume 5, No. 93, page 1685, Federal Register Docket No. 40-2310.

The Examiner: Was the order of June 7th postponing the hearing also published in the Federal Register?

Mr. Berman: Yes, sir. I wish to offer in evidence the order of the [22] Commission dated June 7, 1940, postponing the hearing scheduled for June 10th until June 17, 1940, and ordering that such hearing shall be limited initially to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American and Foreign Power Company, Incorporated, or any of them, in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated, and that voting power shall not be unfairly or inequitably distributed among securities holders of such system, jurisdiction being reserved by the Commission to consider and dispose of all other issues presented by the notice of and order for hearing herein in an appropriate manner.

Mr. MacLane: No objection.

The Examiner: Admitted without objection.

[The document referred to was thereupon received in evidence as Commission's Exhibit 5.]

Mr. Berman: I wish to offer in evidence copies of post office return receipts for registered mail, duly signed, acknowledging the receipt by counsel for the respondents and by the Public Service Commission of the State of Wisconsin and by the State of Maine, of the Commission's order of June 7th postponing the hearing [23] until June 17 and confining the issue as stated.

Mr. MacLane: No objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 6.]

Mr. Berman: I offer in evidence copy of Holding Company Act Release No. 2099, released to the press prior to June 10, 1940, announcing that an order had been issued postponing the hearing from June 10th to June 17, and that the hearing would be confined to the issues as stated in the order. Copies of this release were distributed to the persons on the various mailing lists of the Commission recited above. A copy of it was published in the Federal Register on June 11, 1940, Volume 5, No. 113, page 2188, Federal Register Document No. 40-2310

Mr. MacLane: No objection.

The Examiner: The release is admitted without objection.

[The document referred to was thereupon received in evidence as Commission's Exhibit 7.]

Mr. Berman: I wish to offer in evidence copy of the Commission's order dated June 11, 1940, designating James G. Ewell as the officer to preside at the hearing in the present proceeding.

[24] Mr. MacLane: No objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit 8.]

Mr. Berman: I offer in evidence copies of post office return receipts duly signed, attesting receipt by counsel for the respondents of the order designating James G. Ewell as the officer to preside at the hearing.

Mr. MacLane: No objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit 9.]

Mr. Berman: I wish to state that a copy of said order designating the Examiner was published in the Federal

Register on June 13, 1940, Volume 5, No. 115, page 2219, Federal Register Document Number 40-2381.

Mr. Berman: I offer in evidence copy of the order of the Commission dated June 17, in which it is ordered that American and Foreign Power Company, Inc. be dismissed as a party to this proceeding without prejudice to any future appropriate proceedings involving said American and Foreign Power Company, Inc. under Section 11(b)(2) or any other section of the Public Utility Holding Company Act of 1935, and without limitation upon the power of the Commission to issue any appropriate order directed to the [25] remaining respondents in this proceeding.

Mr. MacLane: No objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit 10.]

Mr. MacLane: Mr. Examiner, I don't know that this is the appropriate time, but I will give notice now that in view of this order represented by Exhibit No. 10, the appearance of counsel for American and Foreign Power will be withdrawn as to American and Foreign Power.

The Examiner: In that connection, it occurs to me that certain testimony here may be adduced effecting the rights of various other companies and if they should be affiliated with this group of particular respondents here, does your appearance cover that situation?

Mr. MacLane: Since the American and Foreign is out of the proceeding, I assume it is not proper for them to be represented by counsel.

The Examiner: I am speaking of the remaining respondents.

Mr. MacLane: I really have not considered that. I don't believe I am prepared to answer you at the moment. I suppose your question is really directed to the point as to

whether if the testimony is adduced to the effect that certain relationships between one of these [26] named holding companies and one of its domestic subsidiaries from which a conclusion might be drawn that those relationships might or might not be effected, the question you pose is whether an order might be made without someone coming in to represent that particular respondent.

The Examiner: I think the order may be made if due process has been had in the matter of notice. I am simply drawing the matter to your attention so that you can procure any further representation you think is necessary.

Mr. MacLane: I think I should wait until the contingency arises because I can't visualize it exactly at the moment.

Mr. Berman: May I proceed, Mr. Examiner?

The Examiner: Yes.

Mr. Berman: I ask that there be marked for identification with Exhibit numbers, the following documents:

The U5B statement filed by Electric Bond and Share Company, consisting of one volume bearing Commission's Docket No. 30-139-1. That would bear the identification of Exhibit 11.

Mr. MacLane: What is the date of the filing?

Mr. Berman: April 4, 1938 is the day it was received in our files.

[The document referred to was thereupon marked for identification as Commission's Exhibit 11.]

[27] Mr. Berman: Similarly I ask to have marked for identification as Commission's Exhibit 12, the U5S statement of Electric Bond and Share Company for 1938 consisting of one volume, bearing Commission's Docket No. 30-139-2, and stamped as received in the Commission's files on May 1, 1939.

The Examiner: It may be so marked.

[The document referred to was marked for identification as Commission's Exhibit 12.]

Mr. Berman: I ask that there be marked as Exhibit 13, the U5S statement of the Electric Bond and Share Company for the year 1939, consisting of one volume, bearing Commission's Docket No. 30-139-2, and marked as received in the files of the Commission on June 4, 1940.

The Examiner: It may be so marked.

[The document referred to was marked for identification as Commission's Exhibit 13.]

Mr. Berman: I ask that there be marked as Commission's Exhibit 14 the U14-3 statement of Electric Bond and Share Company, consisting of one volume, bearing Commission's Docket No. 48-109-1.

The Examiner: It may be so marked.

[The document referred to was marked for identification as Commission's Exhibit 14.]

Mr. Berman: This contains information apparently [28] for the year 1938 and 1939. I ask that there be marked as Commission's Exhibit 15 a file containing proxy information filed by Electric Bond and Share Company in connection with the meetings of stockholders of said company, consisting of one file bearing the Commission's Docket No. 53-155-1. This covers several years, I think.

The Examiner: It may be so marked.

[The document referred to was marked for identification as Commission's Exhibit 15.]

Mr. Berman: Mr. Examiner, I would like to state that counsel for the Commission offer these documents and the similar documents which will be offered in connection with the other respondents for the limited purpose of making them available as part of the record in these proceedings to all parties, for the purpose of convenient reference and for such consideration as may be appropriate. In offering these exhibits, counsel for the Commission does not vouch for the accuracy of any statement contained therein, and vouches merely for the fact that the documents

are part of the official files of the Commission. In offering these exhibits, counsel for the Commission does not concede the materiality or relevancy of any of the material therein contained, and reserves the right to object to consideration of particular material herein [*29*] contained with respect to the issues in this proceeding, and similarly wishes to make clear that any party to the proceeding may at an appropriate time object to the materiality or relevance of any particular provisions thereof. In connection with this offer I wish to point out that in the registration statement filed by Electric Bond and Share Company, marked Exhibit 11, the following information among other information is furnished.

Item 4 sets forth a list of companies in the system showing type of organization, state of organization and type of business.

Item 5 contains a brief description of the general character of the business of the company and its wholly owned subsidiaries, and the substantial changes that have occurred in the general character of the business within the preceding five years. It is to be noted that the U5B statement of Electric Bond and Share Company generally contains information only as to the company itself and its several wholly owned subsidiaries. Information pertaining to American Power & Light Company and its subsidiaries, Electric Power & Light Corporation and its subsidiaries and National Power & Light Company and its subsidiaries may be found in the [*30*] respective U5B statements of these respective subholding companies.

Now, Item 8a of the U5B statement of Electric Power & Light Company shows the funded debt outstanding of the company's wholly owned subsidiaries and the funded debt of those other subsidiaries in which the company owns a portion of the funded debt.

Item 8b contains comparable data for the capital stock as that shown for the funded debt in Item 8a above.

Item 9 sets forth the investments of the company and its wholly owned subsidiaries.

Item 10 shows the investments of the company in securities of American and Foreign Power Company, Inc., American Gas & Electric Company and in securities of other companies which are claimed to be or which are not part of the Electric Bond and Share System.

Item 11a shows debts by associates to the company and wholly owned subsidiaries where the debt exceeds $50,000 or an amount greater than 1/2 or 1 per cent of total debit accounts in the balance sheet of the debtor.

Item 12 describes the principal features of several leases involving No. 2 Rector Street Corporation, and Item 15 sets forth a list of the 20 largest stockholders of each class of stock of Electric Bond and Share Company.

Item 16a shows the compensation that the annual rate [31] as of June 30, 1938 of each director and officer of the company and its wholly owned subsidiaries, where the aggregate compensation is $1,000 per annum or more.

Item 16b shows the compensation of regular employees who are not officers or directors of the company and its wholly owned subsidiaries, and whose annual regular rate of compensation is $20,000 per year or more. Exhibit A of this U5B form is a corporate chart showing the percentage of voting securities held by the company in its subsidiaries, and also shows similar data in respect of subsidiaries of wholly owned subsidiaries of the company. Exhibit B comprises copies of charters, articles of incorporation and other fundamental documents, as well as the by-laws of the company and its wholly owned subsidiaries. Exhibit D contains the financial statements as of December 31, 1937, of the company and its wholly owned subsidiaries.

Exhibit F contains a copy of the annual report to stock-

holders of the company for the year ended December 31, 1937. Exhibit G is a report for the year ended December 31, 1937, filed by Ebasco Services, Inc. with the Public Utilities Commissioner of the State of Oregon.

Now, the U5S statement of Electric Bond and Share [32] Company which has been marked as Commission's Exhibit No. 12 and which is the annual supplement to the registration statement for the year 1938, contains information in general similar to that contained in the U5B statement, but brings up to date to the close of the calendar year 1938 such information. It also contains transcripts of surplus accounts of the company's wholly owned subsidiaries from the dates of inception to December 31, 1938. The U5S statement of Electric Bond and Share Company marked Exhibit 13, brings up to date to the close of the year 1939 information comparable to that of the previous U5B and U5S statements.

Attention is called, however, to the following additional items contained in certain exhibits.

Item 18, the provisions of this item are expanded to include a description of all service, sales and construction contracts in effect during the prior calendar year, by affiliates and by others involving a total compensation of $10,000 or more. Exhibit D of such statement has been expanded to include a transcript of open accounts payable, schedules of depreciation or retirement reserve accounts, statement of depreciation allowable or federal income taxes, and a statement as to any changes in accounting principles [33] and practice. Exhibit G has been expanded to include certain additional reports to be filed thereunder.

The proxy information contains the data filed with the Securities and Exchange Commission by Electric Bond and Share Company, with respect to proxies solicited for annual stockholders' meetings in 1938 and 1939. I now ask that these dockets and files be received subject to the

conditions stated above, in accordance with the exhibit numbers given them.

The Examiner: Is that agreeable to counsel for the respondent?

Mr. MacLane: Yes, on the reservation stated by counsel for the Commission as applicable and available to both sides.

The Examiner: They are admitted under the conditions noted.

[The documents referred to and previously marked for identification as Commission's Exhibits 11 to 15 inclusive, were received in evidence.]

Mr. Berman: At this time I ask to have marked for identification with exhibit numbers the following documents: The U5B statement of American Power & Light Company, consisting of 14 volumes, bearing Commission's Docket Nos. 30-144-1, 1 to 14 inclusive. [34] I ask that they be designated as Commission's Exhibit 16, the first volume being designated 16(a) and the others 16(b), 16(c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), successively.

The Examiner: Off the record.

[Discussion off the record.]

The Examiner: They may be so marked.

[The documents referred to were thereupon marked Commission's Exhibit 16(a) to 16(n) inclusive were marked for identification.]

Mr. Berman: It is agreed that these documents which have been received subject to the statement previously made, and those documents of like character which are to follow, with respect thereto counsel for the Commission and counsel for the respondents reserve, as has been said, the right to question the relevancy or materiality of any portions thereof, and that in the event of Court review or Court proceeding of any kind, if the parties are unable to agree as to which portions are material and necessary

to such proceeding, that the matter shall be referred to James G. Ewell, the Trial Examiner in the present proceeding, for determination, subject to the right of either side who feels aggrieved at the ruling of the Trial Examiner, to have printed at its own expense such portions of the documents excluded and offered to the Court in [35] connection with such proceeding. Is that agreeable?

Mr. MacLane: Yes, sir, the same to have the effect of offers of proof incorporated into the record on appeal. Now, may I ask one question? I hope I am not going to be in any stage of this proceeding technical. I want to move along as much as anybody else. But is it in contemplation of counsel for the Commission that at some time we may be definitely advised by him as to just what portion of this voluminous documentary material we have got to meet? The thing that is a little bit disturbing to me is that we have here piled up before us, 40 or 50 volumes, I suppose, which look as though they comprise several hundred, and some of them several thousands, pages. The offer of their introduction in evidence, coupled with the statement that by offering them counsel for the Commission does not accept any of them or any statement in them as proof of any fact—

The Examiner: Except as an admission against any person offering them.

Mr. MacLane: But it is not binding on him for affirmative proof or any evidence of what his contentions are, and I want to know whether we are going to have any more definite information as to what we have to meet [36] with respect to these papers.

Mr. Berman: With respect to Judge MacLane's question, Mr. Examiner, we wish to say that at the conclusion of the hearings, the time when counsel for the Commission submits to the Commission his proposed findings of fact and the brief in support of such proposed findings of fact and

conclusions, such portion of those documents upon which any proposed finding is made will be clearly and specifically identified so that counsel for the respondents will know exactly what we have relied upon, and I take it that counsel for the respondents in submitting their proposed findings and their brief, will similarly indicate what portion of the documents they base their proposal on, so that the scope of this vast field of documents will be narrowed right down to the necessary point.

Mr. MacLane: It occurs to me that is perhaps a little late. My point is directed to the question as to what we prepare our proof to meet with respect to these things. It does not seem to me you can indicate in this record all the files in the government Archives Building and expect to meet something.

Mr. Berman: We propose further to state at the conclusion of the admission of the documentary evidence that we have to introduce, what our contentions are and what we contend that these documents and the various [37] exhibits offered by the Commission will prove and do prove, and what conclusion may be drawn therefrom, so that we feel that counsel will be adequately advised of our position and will be in a position to meet the issues.

Mr. MacLane: With that understanding I have nothing more to say until that time comes. Then I will say whether I feel that I have notice or not.

The Examiner: I would like to correct my statement where I said the evidence would be binding against the person offering it. I meant the person who filed the document.

Mr. Berman: May I proceed with the offering of the documents, Mr. Examiner?

The Examiner: Certainly.

Mr. Berman: At this time I wish to have marked as Commission's Exhibit 17 the U5S statement of American

Power & Light Company for 1938, consisting of eight volumes bearing Commission's Docket Nos. 30-144-2, 1 to 8 inclusive, the first volume being designated as Commission's Exhibit 17(a) and the others (b), (c), (d), (e), (f), (g), and (h) successively. That is for 1938 and bears the stamp of the Commission's file room showing receipt on May 31, 1939.

The Examiner: They may be so marked.

[*38*] [The documents referred to were marked for identification Commission's Exhibits 17(a) to 17(h) inclusive.]

The Examiner: Off the record.

[Discussion off the record.]

[*39*] Mr. Berman: May we proceed?

The Examiner: Yes.

Mr. Berman: I ask to have marked as Commission's Exhibit 18 the U5S statement of American Power and Light Company for 1939 consisting of six volumes bearing Commission Docket No. 30-144-2-1 to 6 inclusive, and I ask that the first volume be designated as Commission's Exhibit 18-A and the others as B, C, D, E, F successively. This statement bears the stamp of the Commission Docket and Mails and Files Room showing receipt thereof as of June 1, 1940.

The Examiner: The documents so described may be marked for identification Commission's Exhibits 18-A, 18-B, 18-C, 18-D, 18-E and 18-F.

[The documents referred to were marked Commission's Exhibits Nos. 18-A to 18-F, inclusive, for identification.]

Mr. Berman: Mr. Examiner, I ask to have designated as Commission's Exhibit No. 19 the U-14-3 statement of American Power and Light Company consisting of one volume bearing Commission's Docket No. 48-107, containing information for the years 1938 and 1939.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 19.

[The document referred to was marked Commission's Exhibit No. 19 for identification.]

[40] Mr. Berman: I ask to have designated as Commission's Exhibit No. 20 a file containing proxy information filed by American Power and Light Company in connection with meetings of stockholders of said company, one file bearing Commission Docket No. 53-154-1. This contains proxy information for the years 1938 and 1939.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 20.

Mr. Berman: I ask to be marked as Commission's Exhibit No. 21 the form 10 statement filed by American Power and Light Company under the Securities and Exchange Act of 1934 consisting of one volume bearing Commission's Docket No. 1-2224-1, bearing on it the stamp of the mails and files room of the Commission showing receipt on April 8, 1935.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 21.

[The documents above referred to were marked Commission's Exhibits Nos. 20 and 21, respectively, for identification.]

Mr. Berman: I ask to have marked as Commission's Exhibit No. 22 the Form 10-K and 8-K statement filed by American Power and Light Company under the Securities and Exchange Act of 1934 consisting of one volume bearing Commission's Docket No. 1-2224-2. It contains various [41] dates so that it can not be more specifically identified.

Mr. MacLane: Are those supplemental statements?

Mr. Berman: Yes, those are supplemental.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 22.

[The document referred to was marked Commission's Exhibit No. 22 for identification.]

Mr. Berman: In connection with the documents which have been marked as Exhibits 16 to 22 inclusive, together with the letters, I should like to make the following statement as to what is to be found in these documents. The U5B registration statement of American Power and Light Company, Exhibit 16, contains in general information similar to that enumerated above in connection with the registration statement introduced for Electric Bond and Share Company and its wholly owned subsidiaries. Attention is called to the following additional items to be found in Exhibit 16:

Exhibit 5 contains data as to total communities served with electricity, natural gas and manufactured gas. Data for the five years ending December 31, 1937 with respect to the electricity generated and purchased; electric sales; electric customers; electric operating revenues; gas send out; gas sales; gas customers; gas operating revenues of the system.

[42] Item 6 briefly describes the general character and location of the principal plants and properties of the companies in the system.

Item 11-A contains data on inter-system indebtedness where the debt exceeds $50,000 or an amount greater than one-half of 1 per cent of debit accounts on the balance sheet of the debtor.

Item 11-B contains information similar to that in 11-A with respect to debts owing to others.

Item 12 describes principal features of certain leases of the system companies.

Item 13 summarizes the important sales of securities during the preceding five years.

Item 18 includes information as to service sales and construction contracts.

Item 19 describes certain classes of litigation as concerns the company.

Item B comprises copies of indentures and other fundamental documents refining rights of holders of each class of funded debt above a certain minimum size.

Exhibit D contains consolidating financial statement as of December 31, 1937 of the company and its subsidiaries.

Exhibit E contains maps of the properties of the electric and gas subsidiaries.

[*43*] Exhibit F contains annual report to stockholders of the system companies for the year ending December 31, 1937.

Exhibit G contains copies of annual reports filed with state commissions and with the Federal Power Commission for the year ended December 31, 1937.

Exhibit H contains typical forms of service contracts, inspection orders and construction contracts.

Supplement to Exhibit B contained in the last volume of Form U5B contains data of major revaluation of investments and fixed assets.

The U5S annual supplement to the registration statement of American Power and Light Company marked Exhibit 17, contains in general information comparable to that enumerated in connection with the U5B statement, but brings up to date to the close of the calendar year 1938 such information. This statement also contains transcripts of surplus account of subsidiaries from the date of the inception of the companies in the system or from January 1st, 1915, whichever is the later date.

The U5S supplement for 1939 marked as Exhibit 18 contains similar information brought up to the end of 1939.

The U14-3 statement of American Power and Light Company marked Exhibit No. 19 contains information for the period beginning June 1, 1938 ending December

31, 1938, and for the period beginning January 1, 1939 and ending [44] December 31, 1939 with respect to the following:

Item 100 a comparative balance sheet.

Item 102 investments, securities and advances.

Item 150 capital stock.

Item 152 bonded debt.

Item 190 capital surplus.

Item 200 income account.

Item 300 earned surplus account.

Item 261 dividends.

Item 202 investments in stock on which no dividends were declared during the year and accumulated unpaid dividends on preferred stocks of the subsidiary companies.

Item 203 interest.

Item 210 legal and other professional services.

Item 230 other expenses.

Item 240 taxes.

Item 315 dividend appropriations of earned surplus.

The Form 10 statement filed by American Power and Light Company under the Securities and Exchange Act of 1934 marked Exhibit 21 includes the following information among other information:

Item 10 sets forth a tabulation of subsidiaries and parents of registrant showing the respective percentages of voting power.

Item 13 sets forth the funded debt of registrant and subsidiaries.

[45] Item 14 sets forth the capital stock of the registrant.

Item 18 is a description of the registrant's funded debt.

Item 19 description of the registrant's capital stock.

Item 13 sets forth revaluation since January 1, 1925 in investments, property, plant and equipment and intangible assets; restatements since January 1, 1925 of capital stock and write-off since that date of bond discount and expense

earlier than as required under any periodic amortization plan.

In addition there are set forth financial information including a consolidating balance sheet as of December 31, 1934; a consolidated profit and loss statement for the twelve months ended December 31, 1934; a schedule of consolidated plant, property, franchises and so forth; consolidated earned surplus; a corporate balance sheet as of December 31, 1934; corporate income statement for the twelve months ended December 31, 1934; a schedule of investments in subsidiaries and earned surplus.

The Form 10-K statement marked as Exhibit 22 brings the information contained in the Form 10 statement down to date in the succeeding years and the Form 8-K included in Exhibit 22 reflects certain special transactions occurring in succeeding years.

Mr. Examiner, these dockets and filed which have been [46] marked as Commission's Exhibits 16 to 22 inclusive are offered as exhibits, subject to the same terms and conditions stated previously with respect to the similar document offered for Electric Bond and Share. I ask that they be received.

Mr. MacLane: Subject to the same understanding we had with respect to the others, yes.

The Examiner: They are admitted.

[The documents referred to were marked Commission's Exhibits Nos. 16 to 22, inclusive, and admitted in evidence.]

Mr. Berman: Mr. Examiner, at this point I ask to have marked for identification with exhibit numbers the following documents:

The U5B statement of Electric Power and Light Company consisting of 12 volumes bearing Commission's Docket No. 30-143-1-1 to 12 inclusive, and I ask that it be marked as Commission's Exhibit 23, the first volume being designated

as 23-A and the others B, C, D and so forth, successively. This docket bears the stamp of the Securities and Exchange Commission Docket, mail and files room showing receipt of the statement on April 7, 1938.

The Examiner: The 12 documents described may be marked for identification Commission's Exhibits 23-A, 23-B, 23-C, 23-D, 23-E, 23-F, 23-G, 23-H, 23-I, 23-J, 23-K, and [47] 23-L.

[The documents referred to were marked Commission's Exhibits No. 23-A to 23-L, inclusive, for identification.]

The Examiner: We will take a five-minute recess.

[Short recess.]

Mr. Berman: May I proceed, Mr. Examiner?

The Examiner: Proceed.

Mr. Berman: We ask that there be marked as Commission's Exhibit No. 24 the U5S statement of Electric Power and Light Corporation for 1938, consisting of five volumes bearing Commission's Docket Nos. 30-143-2-1 to 5 inclusive, stamped as received by the Commission's mail and file room May 1, 1939, and I ask that the first volume be designated as 24-A and the others 24-B, C, D, and E, successively.

The Examiner: The documents described may be marked for identification Commission's Exhibits Nos. 24-A, 24-B, 24-C, 24-D, and 24-E.

[The documents referred to were marked Commission's Exhibits Nos. 24-A to 24-E, inclusive, for identification.]

Mr. Berman: I ask that there be designated as Commission's Exhibit No. 25 the U5S statement of Electric Power and Light Corporation for the year 1939 consisting of six volumes bearing Commission's Docket Nos. 30143-2-1 to 6 inclusive, and I ask that the first volume be designated [48] as Exhibit 25-A and the others B, C, D, E, and F successively. This exhibit bears the stamp of the mail and file room showing receipt as of June 1, 1940.

The Examiner: The documents described may be marked for identification as Commission's Exhibits No. 25-A, 25-B, 25-C, 25-D, 25-E and 25-F.

[The documents referred to were marked Commission's Exhibits No. 25-A to 25-F, inclusive, for identification.]

Mr. Berman: I ask that the U14-3 statement of Electric Power and Light Corporation consisting of one volume bearing Commission's Docket No. 48-108-1 be marked as Commission's Exhibit No. 26. This exhibit contains information for the years 1938 and 1939.

Mr. MacLane: Are those proxy statements?

Mr. Berman: No, that is the U14-3 statement.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 26.

[The document referred to was marked Commission's Exhibit No. 26 for identification.]

Mr. Berman: I ask that there be designated as Commission's Exhibit No. 27 a file containing the proxy information filed by Electric Power and Light Corporation for the years 1938 and 1939, one file bearing Commission's File No. 53-159-1.

[49] The Examiner: The document described may be marked for identification Commission's Exhibit No. 27.

[The document referred to was marked Commission's Exhibit No. 27 for identification.]

Mr. Berman: I ask that there be designated as Commission's Exhibit No. 28 the Form 10 statement filed by Electric Power and Light Corporation under the Securities and Exchange Act of 1934 comprising one volume bearing Commission's Docket No. 1-222-1, bearing the stamp of the file room showing receipt as of April 2, 1935.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 28.

[The document referred to was marked Commission's Exhibit No. 28 for identification.]

Mr. Berman: I ask that there be designated as Commission's Exhibit No. 29-A and B the Form 10-K and 8-K statements filed by Electric Power and Light Corporation under the Securities and Exchange Act of 1934, being two volumes bearing the Commission's Docket No. 1-222-2-1 and 2, the first volume being designated as A and the second as B.

The Examiner: The document described may be marked for identification Commission's Exhibits Nos. 29-A and 29-B, respectively.

[50] [The documents referred to were marked Commission's Exhibits Nos. 29-A and 29-B, respectively, for identification.]

Mr. Berman: These dockets and files which have been designated Commission's Exhibits 23 to 29 inclusive contain in general the same information with respect to Electric Power and Light Corporation as was enumerated above in connection with the American Power and Light Company, Commission's Exhibits 12 to 22, inclusive. These dockets and files are offered as exhibits subject to the same terms and conditions stated previously with respect to the similar documents offered for Electric Bond and Share, and I now ask that they be received.

The Examiner: Admitted accordingly.

Mr. MacLane: Subject of course to the same understanding.

Mr. Berman: That is understood.

The Examiner: That is correct.

[The documents referred to previously marked for identification Commission's Exhibits Nos. 23 to 29, inclusive, were received in evidence.]

Mr. Berman: I ask that there be designated as Commission's Exhibit No. 30 the U5B statement of National Power and Light Company consisting of nine volumes bearing

Commission's Docket Nos. 30-146-1-1 to 9 inclusive, the [51] first volume being designated as Exhibit 30-A, the others through to I, successively, bearing date of July 29, 1938, and showing receipt by the mail and file room at that time.

The Examiner: The documents described may be marked for identification Commission's Exhibit 30-A, 30-B, 30-C, 30-D, 30-E, 30-F, 30-G, 30-H, and 30-I.

[The documents referred to were marked Commissions Exhibits Nos. 30-A to 30-I, inclusive, for identification.]

Mr. Berman: We ask that there be marked as Exhibit No. 31 the U5S statement of National Power and Light Company comprising four volumes bearing Commission's Docket Nos. 30-146-2-1 to 4 inclusive, the first being designated as A, and the others B, C and D successively, showing receipt by the mail and file room as of May 1, 1939.

The Examiner: The documents described may be marked for identification Commission's Exhibits Nos. 31-A, 31-B, 31-C and 31-D.

[The documents referred to were marked Commission's Exhibits Nos. 31-A to 31-D, inclusive, for identification.]

Mr. Berman: We ask that there be designated as Commission's Exhibit No. 32 the U5S statement of National Power and Light Company for the year 1939 comprising five volumes bearing Commission's Docket Nos. 30-146-2-1 to 5 inclusive, bearing stamp showing receipt by the mail and [52] docket room of the Commission as of June 1, 1940. The first volume will be designated as 32-A and the others as 32-B, C, D and E.

The Examiner: The documents described may be marked for identification Commission's Exhibits Nos. 32-A, 32-B, 32-C, 32-D and 32-E.

[The documents referred to were marked Commis-

sion's Exhibits Nos. 32-A to 32-E, inclusive, for identification.]

Mr. Berman: I should like to have marked as Commission's Exhibit No. 33 the U14-3 statement filed by National Power and Light Company consisting of one volume containing reports for 1938 and 1939 bearing Commission's Docket No. 48-110-1.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 33.

Mr. Berman: I should like to have marked as Commission's Exhibit No. 34 a file containing proxy information filed with the Commission by National Power and Light Company for the years 1938 and 1939 comprising one file bearing Commission's File No. 53-110-1.

The Examiner: The document described may be marked for identification as Commission's Exhibit No. 34.

[The documents above referred to were marked Commission's Exhibits No. 33 and 34, respectively, for identification.]

[53] Mr. Berman: I should like to have marked as Commission's Exhibit No. 35 the Form 10 statement filed by National Power and Light Company under the Securities and Exchange Act of 1934 consisting of one volume bearing Commission's Docket No. 1-221-1 bearing stamp showing receipt by the file room of the Commission as of April 2, 1935.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 35.

[The document referred to was marked Commission's Exhibit No. 35 for identification.]

Mr. Berman: I ask that there be marked as Commission's Exhibit No. 36 Form 10-K and 8-K statements filed by National Power and Light Company under the Securities and Exchange Act of 1934 consisting of one volume bearing Commission's Docket No. 1-221-2.

The Examiner: The document described may be marked for identification Commission's Exhibit No. 36.

[The document referred to was marked Commission's Exhibit No. 36 for identification.]

Mr. Berman: The documents which have been marked as Commission's Exhibits 30 to 36 inclusive contain the same information with respect to National Power and Light Company as was previously enumerated in introducing Exhibits 16 to 22, inclusive, for American Power and Light [54] Company. These dockets and filed are offered as exhibits subject to the same terms and conditions stated previously with respect to the similar documents offered for Electric Bond and Share Company. I ask that they now be admitted in evidence.

The Examiner: Admitted under the same conditions as the others?

Mr. MacLane: Yes.

The Examiner: Very well.

[The documents referred to previously marked for identification Commission's Exhibits Nos. 30 to 36, inclusive, were received in evidence.]

Mr. Berman: At this point, Mr. Examiner, I understand that counsel for the respondent would like to adjourn for the lunch period in order that they may keep an engagement. If that is satisfactory to you, sir.

The Examiner: Do you have more documentary evidence?

Mr. Berman: Not as much as might appear to the eye. Some of that material will be omitted as not being necessary.

The Examiner: You intend to proceed with some additional documents?

Mr. Berman: Yes, we do have additional documents.

[55] The Examiner: All right, two o'clock?

Mr. Berman: Is two o'clock satisfactory to you gentlemen?

Mr. MacLane: Yes.

The Examiner: All right.

[Whereupon, at 12:20 o'clock P.M., a recess was taken until 2 o'clock P.M., this day.]

[56] AFTERNOON SESSION.

[Pursuant to the taking of the noon recess, the hearing was resumed at 2 o'clock P.M.]

The Examiner: Are you ready to proceed, gentlemen?

Mr. Berman: Subject to the same terms and conditions as were stated above in connection with the dockets previously offered, we offer in evidence as Commission's Exhibit 37, I believe, the U-13-60 statement filed by Ebasco Services, Inc., consisting of one volume, bearing Commission's Docket No. 49-24-1, stamped as received by the Securities and Exchange Commission file room on March 30, 1940. This report contains the following information, with respect to the period commencing January 1, 1939 and ending December 31, 1939:

Item 100 is a comparative balance sheet for Ebasco Services, Inc.;

Item 110 is a list of investments;

Item 130 refers to the capital stock of Ebasco;

Item 170 deals with the reserves;

Item 200 deals with the income account;

Item 300 with the earned surplus account;

Item 205 with the allocation of charges for services rendered at cost and at other than cost;

[57] Item 210, allocation of charges for services to construction, sales of goods and other services;

Item 215, analysis of billing for service rendered at cost;

Item 220, analysis for billing for service rendered at other than cost;

Item 230, construction, sales of goods, and other services showing charges to service companies;

Item 235, miscellaneous data as to gross additions to fixed

capital, operating revenues and numbers of customers on serviced companies;

Item 240, bases and methods of allocation of charges for services;

Item 245, compensation for officers, directors and so forth;

Item 246, departmental analysis of salaries;

Item 250, service purchased;

Item 255, advertising;

Item 260, dues and memberships;

Item 265, contributions and donations;

Item 270, other expenses;

Item 275, taxes;

Item 305, dividends. I ask that this exhibit be received subject to the same conditions as stated previously.

[58] Mr. MacLane: We are making no objection subject to the reservations and so forth which have been stated.

The Examiner: It is accordingly admitted under the same conditions as the other.

[The document referred to was thereupon received in evidence as Commission's Exhibit 37.]

Mr. MacLane: I just want to remark that I fail to see under the issues as suggested at this time, how that particular report is connected with the matters here involved. You don't need to answer that, Mr. Berman, but I thought I ought to make a specific statement.

Mr. Berman: We have preserved the right of counsel to object to the relevance of any of this material, and should it appear to you later that it is not relevant to the issues, you, of course, will have a right to object to it on that ground.

Mr. Berman: Subject to the same conditions and terms previously stated, we offer as Commission's Exhibit 38 a record of the proceedings before this Commission in connection with the declaration of Ebasco Services, Inc. under Rule U-13-22, and Section 13 of the Public Utility Holding

Company Act of 1935, and its application for exemption from the requirements of that section and the Commission's rules in respect of services rendered to the subsidiaries of American and Foreign Power Company, Inc.

[59] This record consists of three volumes, bearing Commission's Docket Nos. 37-31, 1 to 3, and 17 volumes of exhibits bearing the docket Nos. 37-1-31-1, 1 to 17, and there are also two volumes in connection with the application for exemption stated above bearing the docket Nos. 37-44-1, 1 and 2. I ask that the three volumes being the record and transcript of the proceeding, be designated 38 (a), (b) and (c), respectively, and the 17 volumes of exhibits be numbered successively from 38(d) on. I ask also that the volumes 37-44, 1 and 2, which are identified as pertaining to the application for exemption, be designated Exhibit 38(u) and 38(v).

Mr. MacLane: That is agreeable, subject also to the remarks that I made with respect to the 37 exhibit.

The Examiner: Admitted.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 38(a) to 38(v), inclusive.]

Mr. Berman: Subject to the same terms and conditions previously stated, we offer as Commission's Exhibit 39 the record of a proceeding in the application of Pennsylvania Power & Light Company, pursuant to Form U6B7, this record consisting of three volumes, bearing Commission's Docket No. 32-164-1, 1 to 3 inclusive, and I [60] ask that the first volume be designated Commission's Exhibit 39(a) and the others 39(b) and 39(c) successively.

The Examiner: They may be so marked.

[The documents referred to were thereupon marked as Commission's Exhibits 39(a), (b) and (c) respectively for identification.]

Mr. Berman: This record contains information with re-

spect to the application of Pennsylvania Power & Light involving the issue and sale of $95,000,000 principal amount of first mortgage bonds, 3½ series, due 1969, and other debentures and certain notes. This record, Mr. Examiner, is offered, solely for the light which it throws upon the relations between Pennsylvania Power & Light Company and its parent company, National Power & Light Company, a respondent herein, and Ebasco Services, a respondent herein, and for the relations and the functions performed by each of these various companies. I ask that it be received subject to the same conditions as stated before.

Mr. MacLane: No objection at this time.

The Examiner: It may be admitted accordingly.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 39(a), (b) and (c) respectively.]

[*61*] Mr. Berman: Subject to the same statements we offer as Commission's Exhibit 40 the U6B7 statement filed by Portland Gas & Coke Company, consisting of two volumes, bearing Commission's Docket Nos. 32-179-1, 1 and 2, and ask that they be designated as Commission's Exhibits 40(a) and 40(b). They are offered for the same purpose as Exhibit 39, in connection with Pennsylvania Power & Light, and I ask that they be admitted.

Mr. MacLane: That involved, did it not, an extension of the bonds, an issue of $600,000 stated at par or some kind of value.

Mr. Berman: That involved the extension of maturity from January 1, 1940 to January 1, 1950, of the company's first and refunding 5 per cent and first lien and general 4½ per cent mortgage bonds, and the issue and sale to American Power & Light Company of 6,000 shares no par common stock for $600,000.

Mr. MacLane: Thank you.

The Examiner: Admitted under the same conditions.

Mr. MacLane: That is satisfactory.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 40(a) and 40(b) respectively.]

Mr. Berman: Subject to the same terms and conditions, and for the same purposes as the foregoing, I offer the [62] U-1 statement filed by Kansas Gas & Electric Company, comprising two volumes, bearing Commission's Docket No. 70-23-1, volumes 1 and 2, and ask that they be designated as Commission's Exhibits 41(a) and 41(b) respectively. This application involved the issue and sale of $16,000,000 principal amount by Kansas Gas & Electric Company of first mortgage bonds, 3⅜ per cent series, due 1907.

Mr. MacLane: That is satisfactory under the same conditions.

The Examiner: Admitted under the same conditions.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 41(a) and 41(b) respectively.]

Mr. Berman: Subject to the same terms and conditions and for the same purposes, we offer as Commission's Exhibit No. 42, the Form U6B7 statement filed by Washington Water Power Company consisting of two volumes, bearing Commission's Docket Nos. 43-220-1, 1 and 2, and ask that they be designated as Commission's Exhibits 42(a) and 42(b) respectively.

Mr. MacLane: The same stipulation.

The Examiner: Admitted under the same conditions.

Mr. Berman: This application involved the issue and sale of $22,000,000 principal amount of first mortgage [63] bonds, 3½ per cent series, due 1964.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 42(a) and 42(b) respectively.]

Mr. Berman: Subject to the same terms and for the same

purposes, we offer as Commission's Exhibit 43 the U6B7-1 application of Northwestern Electric Company, consisting of four volumes, bearing Commission's Docket Nos. 32-173-1, 1 to 4 inclusive. This application involved the issue and sale of $6,700,000 principal amount of first mortgage bonds, 4 per cent series, due 1969, and $2,800,000 principal amount of 4½ per cent debentures due 1959. I ask that the volumes be designated 43(a), (b), (c) and (d) successively.

The Examiner: They may be so marked, and received in evidence.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 43(a), (b), (c) and (d).]

Mr. Berman: Subject to the same terms and conditions and for the same purposes, I offer the U-1 statement filed by Carolina Power & Light Company, consisting of three volumes, bearing Commission's Docket No. 70-51-1, 1 to 3 inclusive, and I ask that they be designated as Commission's Exhibits 44(a), (b) and (c). [64] Volume 3 is apparently not in the room at this moment. We ask that 44(c) be reserved for that volume when found.

The Examiner: Commission's Exhibits Nos. 44(a) and (b) may be received and Commission's Exhibit 44(c) will be reserved for the document which will be supplied later.

[The documents referred to were thereupon received in evidence as Commission's Exhibits 44(a) and 44(b).]

[The Commission's Exhibit No. 44 (c) was reserved for the above mentioned volume.]

Mr. Berman: Subject to the same conditions as stated with respect to the dockets and files previously introduced, we offer in evidence copies of annual reports issued by Electric Bond and Share Company for the period 1929 to 1938, inclusive, and we ask that they be marked and entered as a single exhibit, namely, Commission's Exhibit 45.

The Examiner: They may be admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit 45.]

Mr. Berman: I might state for the record, Mr. Examiner, that the 1939 report of this company and the other respondents is included in the U5S statements for 1939, for these respective companies, previously put in evidence. Subject to the same conditions as the foregoing, we [65] offer in evidence the annual reports of American Power & Light Company for the years 1929 to 1938, inclusive, and ask that they be marked as a single exhibit, namely Commission's Exhibit 46.

Mr. MacLane: Satisfactory after the same conditions.

The Examiner: Admitted accordingly.

[The document referred to was thereupon received in evidence as Commission's Exhibit 46.]

Mr. Berman: On the same terms and conditions we offer the annual reports of Electric Power & Light Corporation for the years 1929 to 1938, inclusive, and ask that they be designated as Commission's Exhibit 47.

The Examiner: They may be received under the same terms and conditions.

[The document referred to was thereupon received in evidence as Commission's Exhibit 47.]

Mr. Berman: Subject to the same terms and conditions we offer the annual reports of National Power & Light Company for the years 1929 to 1938, inclusive, and ask that they be admitted as Commission's Exhibit 48.

The Examiner: Admitted under the same conditions.

[The document referred to was thereupon received in evidence as Commission's Exhibit 48.]

Mr. Berman: We have requested certain information with respect to the number and percentage of shares voted [66] at the stockholders' meetings of the respondents and certain other information. We have been advised by Mr. Samuel Murphy of Electric Bond and Share Company, that

this information will be supplied to us as soon as available, and I should like at this time to reserve an Exhibit No. 49 for this information and relevant information based thereon, to be placed in evidence when received.

Mr. MacLane: Satisfactory.

The Examiner: The record will contain such reservation.

[Commission's Exhibit No. 49 was thereupon reserved for the above information.]

Mr. Berman: We offer in evidence as Commission's Exhibit 50 a tabulation prepared by the Commission's staff showing volume of trading on certain national stock exchanges, and the range of prices in the shares of Electric Bond and Share Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, for the year 1939 as reported in the New York Times of January 2, 1940.

The Examiner: Any objection?

Mr. MacLane: I think I would say not even though—

The Examiner: You mean you would like the right to check it?

[67] Mr. MacLane: Yes.

The Examiner: I will admit it subject to notification by the respondents as to any errors. The respondents, however, are charged with the responsibility of bringing any errors or exceptions he wants to take to my attention during the course of the hearing. Otherwise it is admitted for the same general purpose.

Mr. MacLane: Subject to the same reservations as to relevancy.

[The document referred to was thereupon received in evidence as Exhibit No. 50.]

The Examiner: Is that all the voluminous documentary evidence you have to offer?

Mr. Berman: It is, Mr. Examiner.

The Examiner: I would like to say this: Of course, both

sides having stipulated that the evidence be admitted under the terms and conditions noted in the record, I have allowed it at this time. However, I would like to say that there is a possibility that I may wish to change my ruling as to the admission of this voluminous evidence. My thought is—and I am only throwing this out as a suggestion and as a practical matter—I am not presuming to tell counsel for the Commission how they should present their case, and I am aware that I don't know anything about it except the pleadings and what is contained in [68] the order and notice of hearing. On the other hand, I think Dr. Splorn once said of some of these holding companies, he described them as empires of scatteration. I should like to prevent that from developing into a record of scatteration, and as a practical matter, when I see a wagonload of documents put into evidence it does seem to me that if possible counsel ought to work out some method whereby pertinent and relevant information would be segregated. The thought I have in mind is this: It is a good deal like telling a man that he is guilty of doing certain things and then presenting a record of all he ever wrote, said or did, as evidence of the charge, and it was my thought that I just want to ask you if it is possible to work out something along this line. The Commission has alleged in its orders that these respondents have indulged in certain activities which are enumerated in the order 1, 2 and 3. I am quite sensible to the fact that it is quite complicated and a great many cases are involved, but I am wondering whether or not it would not be possible for the Commission to put on its witnesses and through the testimony bring out certain transactions which it regards as evidence of that fact, and to submit proof from these documents in [69] substantiation of it, rather than to put all these documents in first, I don't know whether it is possible to work it out that way or not, but if it is, it seems to me

that it will build up a much clearer record and in a way that will be much fairer to the respondents.

Mr. Berman: Mr. Examiner, we feel that perhaps these dockets are much more awesome in appearance than they are in fact. We feel that they contain information which, as we said at the start when we first introduced them, ought to be available for reference by both sides to the extent that they are material, and to the extent that they are immaterial they will subsequently be disregarded. As an instance of what I mean, consider the U5B statement of American Power & Light which comprised 14 volumes. That is a very imposing array of volumes and it does not surprise us that you feel, Mr. Examiner, that it would impose a tremendous burden on the respondents to familiarize themselves with the contents of those volumes. But upon analysis it is found that two volumes are taken up by copies of charters and by-laws of American Power & Light Company and its underlying companies. That is all material which we ought to have a right to refer to. [*70*] It certainly bears on the issues of stock, voting rights of the stock, capitalization of the company, and we can't say at this time that we want to refer to Section 32 of the charter and by-laws. We feel that the entire charter and by-laws of the respondents are relevant in this proceeding. There is nothing new or formidible about them. The respondents drafted them and signed them and know what they contain. In similar manner there are four volumes in that statement devoted to the indentures of American Power & Light Company and its underlying subsidiary companies. They are voluminous documents, but they were prepared by the respondents or their attorneys, and they, of course, know what is in them and we feel they ought to be available for such reference as is seen fit.

The Examiner: Isn't it possible to develop through

testimony those particular portions which have probative value in this proceeding?

Mr. Berman: That will be done at a time which will afford the respondents notice of what we are relying on. We stated in the meantime that they are introduced merely for the purpose of subsequent reference. We have the feeling that neither the Commission nor counsel for the respondents should be foreclosed from [71] referring to the charter and by-laws of the corporation, because it is not in evidence, and yet we don't want to put someone on the stand to testify to what section 17 is before we can put in that document. It seems to us that these fundamental documents are basic to the proceeding, and should be here for purposes of reference, and as the proceeding goes on, I think the field of materiality will be narrowed so that ultimately we may find that certain of the charters and by-laws can be dropped out of the record if need be.

The Examiner: Let me ask you this: Would it serve your purpose to have this material marked first for identification only, and then have relevant and material portions admitted as the testimony develops, or as you go on and the materiality of a particular portion becomes apparent?

Mr. Berman: No, Mr. Examiner, we don't feel that would be the proper procedure. We feel these volumes are properly in evidence for the purpose of reference by the parties and that they belong in the record. As we say, we don't feel that either side should be foreclosed from referring to them because they are not in the record or part of it. At the time of our proposed findings of fact, if they are based on any parts of those records, we will certainly [72] specify what part they are based upon and counsel for the respondents will be able to allude to and contest the materiality or relevancy of those parts, and make whatever objections they find are necessary. We feel that while the procedure that has been followed may be a little cumbersome, it is

necessary because of the number of these documents and their importance. Furthermore, in connection with the U5B form, volumes 8 to 14 contain copies of reports to the state commissions and Federal Power Commission by the respondents or their subsidiaries, and they are familiar with these matters, so that these 14 volumes which comprise the U-14-B form of American Power & Light contain no great mass of material for the respondents to acquaint themselves with. They have copies in their offices and—

The Examiner: I am sensible of the fact that the respondents are legally charged with knowledge of the contents because it was prepared by them or their affiliates. I am amenable to suggestion. If counsel could work out something that will eliminate some of this, I think everybody will be in favor of it, including myself. For the time being we will proceed along the lines to which counsel for both sides have agreed.

Mr. MacLane: I was going to ask you, Mr. Examiner, [73] to kindly reserve ruling until counsel for the Commission has completed offering the exhibits that he proposes to offer. There are a few more, are there not?

Mr. Berman: There are several.

Mr. MacLane: Of course, when this is all in, depending on what course counsel for the Commission proposes to pursue, I may wish to make a motion which will formally present this matter for your ruling and I don't want to take up the time and interrupt the proceedings prematurely, so I will ask you to reserve a definitive ruling until that time.

The Examiner: Very well.

Mr. Berman: We offer as Commission's Exhibit No. 51, statement of capitilization and surplus and distribution of voting power of Electric Bond and Share Company as of December 31, 1939. I may state that the source of this material is stated at the bottom of the exhibit as Docket

No. 30-139-2, Items 8 and 8b and Exhibit B, all taken from the statements filed by the respondents themselves.

Mr. MacLane: Now, does this reference to source refer to some one of the many exhibits which were introduced?

Mr. Berman: Yes.

Mr. MacLane: Could you tell me which one for [74] identification?

Mr. Berman: The volume stated is Docket 30-139-2 which has been received in evidence as Exhibit 13.

Mr. MacLane: There is no objection to it then, subject to check.

[Discussion off the record.]

The Examiner: I want to say again that the respondents are charged with the responsibility of bringing any correction or exception that they deem necessary to my attention.

Mr. MacLane: We understand that. I would like to ask another question of counsel as to this exhibit. Is the second page of the exhibit which states further distribution of voting power between preferred and common stocks, a computation from information in this Exhibit 13, or does it reflect by copying figures in Exhibit 13?

Mr. Berman: The percentages are our computations based upon the figures submitted in Exhibit 13 by the respondent.

Mr. MacLane: And the computation is made by whom?

Mr. Berman: The computation is made by the staff of the Commission. We understand that counsel for the respondent will have the right to challenge the correctness of any of these figures if subsequently they determine they are not correct.

[75] Mr. MacLane: Well, now, Mr. Examiner, this presents one of the problems that this method of procedure puts to us. Here is a list here of certain shares of stock of different classes, $5 preferred, $6 preferred and common stock, and then against each is assigned the voting power

which those shares have which is exactly one vote for each share of stock. That is, of course, to the best of my recollection a correct statement. And then that is developed mathematically into a certain statement of percentage. Without checking it mathematically I presume the mathematics are correct. But the figures are related back to the capital figures which are taken from the first sheet of the exhibit and they ignore the surplus figures altogether, and it might be contended—I don't say whether it does or not from just a moment of examination,—but it certainly may be very reasonably contended to adduce a mathematical exercise that has no relation at all to reality.

The Examiner: What kind of reality? That covers so much territory.

Mr. MacLane: I would suppose that one might draw the inference from these two tabulations, sheets 1 and 2 of this exhibit, and I would say from giving it a very [76] hasty examination—and that is the trouble with this proceeding—as I am saying, that 4.8 per cent of the capitalization as shown on sheet 1 represents 78.30 per cent of the voting power as shown on sheet No. 2. Now, on the other hand, if you take the par value of the common stock and the stated capital surplus and earned surplus, you arrive at a result in which the percentage applicable to common stock and investment as per books, bears an almost direct ratio—again guessing very quickly from the figures and not attempting to be entirely accurate—to the values or asset values which are assignable or attributable to the common stock.

The Examiner: Those are purely interpretation—

Mr. MacLane: Those are purely matters of interpretation.

The Examiner: Whatever weight or interpretive value is to be given any particular evidence is a matter of debate.

Mr. MacLane: It seems to me the proper way to present such evidence as this would be through the witness, or

through the person who prepared the computation, and develop the theory upon which he made his computation and the alternative theory which might be applied.

The Examiner: It might also be a matter of cross examination.

[77] Mr. MacLane: That is what I mean. To merely give us this sheet of paper without an opportunity to examine the witness or even to analyze the piece of paper, does violence to my theories of orderly procedure.

[78] The Examiner: It does seem to me that there should be something—of course, I haven't seen the document and don't know what it is—unless this information was submitted in the form of a document it might be used as an admission against the person offering it against the respondent. It does seem to me that the method of computation and the source of the material should be given before the document is admitted or offered into evidence.

Mr. MacLane: May I suggest we let it stand subject to the same general objection and the motion I shall make later?

Mr. Berman: May I suggest, Mr. Examiner, that we are not offering this exhibit for the conclusions to be drawn from it, and counsel for the respondents is not bound by any conclusions as may be drawn from it, and will have full opportunity to make whatever statement, present any evidence he wishes, and examine and cross examine whoever prepared it. We are offering it for a compilation of figures based upon source information submitted by the respondents themselves. The method of calculation is obvious. We can not accord voting power to the surplus, when surplus does not have voting power. The voting power is distributed among several classes of stock and that is what [79] we say. The capitalization is distributed among various classes of stock and amongst capital surplus and earned surplus. However, if Judge MacLane wishes us to,

we will put on the stand the man who prepared it, although it seems plain how it was computed, and he will state how he computed it and where he got his information and it seems to me that is all that is required to validate the statement for admission as an exhibit.

The Examiner: There is nothing here to show its source. These figures may have been gotten from a dozen different volumes by a dozen different men, so I think I will have to sustain the objection of counsel unless you will identify the sources.

Mr. Berman: We have identified the source at the bottom of the exhibit. It is stated to be Docket 30-139-2, items 8 and 8-B in Exhibit B, and that has been stated to be Commission's Exhibit 13, and we have stated that we ourselves computed the percentages. That it seems to me is precisely based and indicated, but if further information is desired on that point we have no objection to putting on the man who prepared it to state with greater precision, if possible, although I don't know how it would be, where the figures were derived.

The Examiner: Counsel, if you insist on the objection [*80*] I will sustain it. I don't think it is properly identified for the record unless you are willing to concede it. If you press your objection I will sustain it.

Mr. MacLane: I stated at the outset of this proceeding that I had no desire to be technical, but it seems to me this exhibit was drafted for the purpose of adducing a mathematical inference which I think is factually incorrect. The mere matter of the figures may be right, but all the elements that should be taken into the equation have not been taken into it.

The Examiner: Do you insist upon your objection?

Mr. MacLane: I insist upon the objection or else I ask leave to renew my objection in connection with my motion which I expect to make at the close of this presentation.

The Examiner: Well, I can't blow hot and cold. I have to make a ruling one way or the other.

Mr. MacLane: If you feel that you must rule at the moment I feel I must insist on my objection at the moment.

The Examiner: The objection is sustained until a better foundation is laid for the testimony.

Mr. Berman: Will you kindly indicate, Mr. Examiner, as the basis for your ruling, what information you feel has not been given here which would validate the exhibit?

[*81*] The Examiner: Sworn testimony as to the source of the material, and submit the document to the proper cross examination by counsel for the other side.

Mr. Berman: Cross examination as to the source and basis?

The Examiner: Cross examination as to source and basis.

Mr. Berman: We take exception to your ruling, if we may, Mr. Examiner, and we ask for a short recess.

The Examiner: We will take a short recess.

[Short recess.]

The Examiner: Proceed, gentlemen. The exhibit will be marked for identification only until a foundation is laid in accordance with the Examiner's previous statement.

[The document referred to was marked Commission's Exhibit No. 51 for identification.]

Mr. Berman: Mr. Examiner, with respect to the discussion that took place immediately preceding the recess, it has been agreed between the parties that at this time we should proceed to introduce a series of tabulations including the one marked as Exhibit 51, all for the purpose of identification only, and that at tomorrow's session we will put our witnesses on the stand to qualify them as you have indicated is proper. So for the purpose of the record, we wish it stated [*82*] that the document marked as Exhibit 51 is not in evidence but is merely marked for identifi-

cation. And we ask that there be marked for the purpose of identification a tabulation of the capitalization and surplus and distribution of voting power of the American Power and Light Company as of December 31, 1939, the source being indicated at the bottom of said tabulation. We ask that it be marked for identification as Exhibit 52.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 52 for identification.]

Mr. MacLane: If it is not too much trouble I would appreciate it if you would tie this in to the exhibits as you identify them.

Mr. Berman: You mean as to the source?

Mr. MacLane: Yes.

[Discussion off the record.]

Mr. Berman: It is Exhibit 18, but we will have to check the volume for the letter and we will advise you.

Mr. MacLane: That is sufficient for my purpose.

Mr. Berman: Do you wish to see copies of this, Mr. Examiner?

The Examiner: I don't think it is necessary as long as they are being marked for identification only.

[83] Mr. Berman: I ask that there be marked for identification a tabulation of the capitalization, surplus and distribution of voting power of American Power and Light Corporation as of December 31, 1939, and that it be marked for identification as Commission's Exhibit 53.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 53 for identification.]

Mr. MacLane: This is marked as coming from Exhibit 8 and 8-B. Is that correct?

Mr. Berman: That Exhibit 8-8-B is not the number of the exhibit which forms a part of this record. It is the exhibit with the U5S form with the docket number given to

that. We will try to get that information from the exhibits for you. We ask that there be marked for identification tabulation of capitalization, surplus and distribution of voting power of National Power and Light Company as of December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 54 for identification.]

Mr. Berman: We ask that there be marked for identi-
[84] fication tabulation of the investments of Electric Bond and Share Company in American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company as of December 31, 1939, with the sources of the information indicated, and we ask that it be designated for identification as Commission's Exhibit 55.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 55 for identification.]

Mr. Berman: We ask that there be marked for identification tabulation showing the excess of carrying value over cost to company originally acquiring securities, of investments of Electric Bond and Share Company in American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company. We ask that it be designated for the purpose of identification as Commission's Exhibit 56.

The Examiner: It may be so marked.

[The document referred to was marked as Commission's Exhibit No. 56 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 57, tabulation showing investments of Electric Bond and Share Company in subsidiaries of American Power and Light Company, Electric

[85] Power and Light Corporation and National Power and Light Company as of December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 57 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 58 a tabulation of the investments of American Power and Light Company in securities of subsidiary companies as of December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 58 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 59, tabulation of investments of Electric Power and Light Corporation in securities of the subsidiary companies as of December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 59 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 60 a tabulation of investments of National Power and Light Company in securities of subsidiary companies as of December 31, 1939.

The Examiner: It may be so marked.

[86] [The document referred to was marked Commission's Exhibit No. 60 for identification.]

Mr. Berman: We ask that there be marked as Commission's Exhibit 61 a tabulation of the combined consolidated capitalizations of American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company as of December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 61 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 62, tabulation of expenses of Electric Bond and Share Company for the twelve months ending December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 62 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 63 the tabulation of expenses of American Power and Light Company for the twelve months period ended December 31, 1939.

The Examiner: It may be so marked.

[87] The document referred to was marked Commission's Exhibit No. 63 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 64, statement of expenses of Electric Power and Light Corporation for the twelve months period ended December 31, 1939.

The Examiner: It may be so marked.

[The document referred to was marked Commission's Exhibit No. 64 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 65, a tabulation of expenses of National Power and Light Company for the twelve months ended December 31, 1939.

The Examiner: They may be so marked.

[The document referred to was marked Commission's Exhibit No. 65 for identification.]

Mr. Berman: We ask that there be marked for identification as Commission's Exhibit 66 a statement of expenses of Ebasco Services, Inc. for the twelve months period ended December 31, 1939.

The Examiner: They may be so marked.

[The document referred to was marked Commission's Exhibit No. 66 for identification.]

[88] Mr. Berman: We ask that there be marked for identification as Commission's Exhibit No. 67 a statement of the undeclared cumulative dividends on preferred stock of American Power and Light Company and Electric Power and Light Corporation.

The Examiner: That will be so marked.

[The document referred to was marked Commission's Exhibit No. 67 for identification.]

Mr. Berman: If it is agreeable with you and counsel for the respondent we think we would like to adjourn until tomorrow morning so I may have time to collect the documents and proceed in an orderly fashion.

The Examiner: Do you have anything you may proceed with to expedite the hearing at this time?

Mr. Berman: There is nothing we want to proceed with at this time. We feel we ought to get the matter of the qualification of these exhibits out of the way before we proceed further, and therefore I would like to adjourn until tomorrow.

The Examiner: Off the record.

[Discussion off the record.]

The Examiner: The hearing stands adjourned until 9:30 tomorrow morning. All interested parties will return at that time.

[89] [Whereupon, at 3:35 o'clock P.M., the hearing in the above-entitled matter was adjourned until 9:30 o'clock A.M., Wednesday, June 19, 1940.]

[90] Hearing Room 1103, Securities and Exchange Commission Bldg., Washington, D. C., Wednesday, June 19, 1940.

Met, pursuant to adjournment, at 9:30 o'clock A.M.

Before: JAMES G. EWELL, *Trial Examiner.*

Appearances:

As heretofore noted.

[91] The Examiner: The hearing will resume, please.

Mr. Berman: Are you prepared to have me proceed, Mr. Examiner?

The Examiner: Yes.

Mr. Berman: At the conclusion of the hearing yesterday, Mr. Examiner, we had entered a number of exhibits marked for purposes of identification with the understanding that we would qualify them this morning for admission as evidence and for that limited purpose only I wish to place Mr. Flanagan on the stand, if I may. I ask that he be sworn.

The Examiner: Very well.

Whereupon.

JAMES H. FLANAGAN

a witness produced by and on behalf of the Securities and Exchange Commission, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. BERMAN.

Q. Mr. Flanagan, have you given your name and address to the reporter? *A.* I have.

Q. Will you please tell us what your present position is? [92] *A.* I am senior analyst in the Public Utilities Division of this Commission.

Q. Have you been with the Commission for some time? *A.* Since December 1, 1935.

Q. And prior to coming with the Commission did you have a varied experience in the field of accounting, auditing and finance work with public utilities and other organizations? *A.* I did.

Mr. MacLane: We are pleased to admit Mr. Flanagan's accounting qualifications.

Mr. Berman: Thank you, sir.

By Mr. Berman:

Q. (By Mr. Berman): Mr. Flanagan, are you familiar

with the document which is marked for identification as Commission's Exhibit No. 51? I show you a copy of such exhibit. *A.* I am.

Q. This is the document to which I refer. *A.* I am.

Q. Have you a copy of it before you? *A.* I have.

Q. Was this tabulation which is before you and which has been identified as Commission's Exhibit No. 51 prepared under your supervision and direction? *A.* It was.

Q. Are you familiar with the contents thereof? [*93*] *A.* I am.

Q. Will you please tell us where you got the variety of information set forth in the first four columns on the first sheet of this exhibit starting with the column headed "Issue"? *A.* The report to stockholders prepared by Electric Bond and Share Company for the year ended December 31, 1939 contains a balance sheet of that company as of that date.

Q. May I interrupt a moment? *A.* Yes.

Q. Is that balance sheet in that report in evidence, Mr. Flanagan, in this proceeding? *A.* A copy of the balance sheet to which I refer is presented in Docket 30-139 which contains the U5S statement of Electric Bond and Share Company for the year 1939, and that balance sheet is contained therein as Exhibit 13-A.

Mr. MacLane: That is Exhibit 13-A in this proceeding. Is that right?

Q. (By Mr. Berman): Is that Exhibit 13-A in this proceeding? *A.* That is Commission's Exhibit 13-A. I am sorry. I will correct that. The company exhibit is D, sheet 1.

Q. The company exhibit to that docket is D, sheet 1? *A.* Yes.

Q. But it is Commission's Exhibit No. 13-A in this [*94*] record? *A.* That is right.

Q. Thank you, Mr. Flanagan. Will you please proceed? *A.* This balance sheet lists the securities of the company outstanding as of that date and states the liquidation value of the capital stock and the par value of the common stock. These descriptions as to stocks outstanding were verified by reference to the company's item 8(b) in the docket number and the Commission exhibit number previously referred to.

The number of shares issued is also contained in those documents and the dollar amount applicable to each class of stock outstanding is also reflected therein. The dollar amount opposite the capital surplus item in this statement and the dollar amount opposite the earned surplus item in this statement were obtained from the company's balance sheet as at December 31, 1939.

Q. Now, Mr. Flanagan, do you have any personal knowledge as to whether the amount stated in these columns correctly reflect the books and accounts of Electric Bond and Share Company? *A.* No, sir.

The Examiner: This is just a suggestion I would like to make. I wonder if it would not be satisfactory procedure if Mr. Flanagan simply stated that he got these figures from [95] Exhibits A, B, C, D and so forth and then turn him over for cross examination by the respondent. My object in insisting upon this procedure is simply to protect the respondent's right to cross examine before the introduction of evidence.

Mr. Berman: I take it the cross examination would be cross examination limited to the matters you mentioned yesterday, that is the source of the material and not as to inferences to be drawn therefrom.

The Examiner: I don't see why there should be any limitation on cross examination.

Mr. Berman: What we are now engaged in doing is qualifying these exhibits for introduction in evidence, and

in order to do so, as you stated yourself in yesterday's hearing, as I recall it, Mr. Examiner, it is necessary that this evidence be identified in sworn testimony, the source identified and the method of computation stated. That having been done it seems to me it becomes qualified for admission.

Now if subsequently the respondent wants to cross examine on other subjects that is a different matter, but as far as the introduction in evidence goes that is all we have to do, as I understand it.

The Examiner: I would not be disposed to limit the cross examination. I don't think documentary evidence is different from any other kind of evidence. If a witness is [96] put on to testify he did so-and-so on a certain date the other side is at liberty to cross examine whether he did something else on a certain date.

Mr. Berman: This witness is not on the stand to testify he did anything except that he set forth certain figures taken from the company's records. He is not here to state what they represent. He is here merely to state where he got the figures and compiled them.

The Examiner: I would not want to lay down any hard and fast rule now. I will take any argument you may have under advisement. In view of a situation of that kind you make an objection and I will pass on it. I don't want to pass on it in advance.

Mr. Berman: Under the circumstances I should prefer, if you don't mind, to proceed to identify the documents on direct examination and proceed to an enumeration of the various items so there will be no question as to where every item was taken and the computation.

The Examiner: My suggestion was for the purpose of saving time. If you don't want to do that you may proceed as you suggest.

Mr. Berman: I am as anxious to save as much time as

anyone else. This point was raised yesterday and it was insisted we proceed in a more thorough manner and now that we are doing it I want to proceed in this way if that is agreeable [97] with you, sir.

The Examiner: All right.

Q. (By Mr. Berman): Now Mr. Flanagan, looking at the figure at the bottom of the fourth column, that is the column headed "Dollar amount per books of issuer," at the bottom of that is the figure of $548,660,805.05. Will you please tell us what that figure represents? A. That is merely the sum arrived at by adding the various items contained in the column above that.

Q. That includes the amount for capital and earned surplus listed immediately above, does it not? A. That is true.

Q. With respect to figures contained in this column, the last column headed "Percent of total capitalization," were those figures set forth on the U5S statement of the respondent? A. No, sir.

Q. Those figures were computed by you? A. Yes, or under my direction.

Q. Now taking the first figure set forth, the percentage of 5.468, would you please tell us how that percentage was arrived at?

Mr. MacLane: I am perfectly willing to admit it is correct as a matter of mathematics.

Mr. Berman: And the method of computation is per- [98] fectly clear?

Mr. MacLane: The method of computation is perfectly clear. I am perfectly willing to admit all the figures stated in the last column of the first sheet of Exhibit 51 are correct mathematical derivatives of the bases stated in the preceding column opposite the respective figures of the last column.

Q. (By Mr. Berman): Now as to the source of the foot-

notes on that page, Mr. Flanagan, were they derived similarly from the U5S statement of the respondent, that is, Commission's Exhibit 13 in evidence? *A.* They were.

Q. Will you kindly turn to the second sheet of this exhibit? *A.* Yes, sir.

Q. Will you kindly state the source of your information for the figures in the first three columns starting from the left-hand side? *A.* The description of the issue and number of shares outstanding and the number of votes attaching to these shares were derived from the same source as previously quoted. However, with respect to the number of common shares outstanding it will be noted that this figure does not agree with the number of shares listed on the capital and surplus statements on the previous page of this exhibit.

[99] *Q.* What is the reason for that, sir? *A.* The reason for that is that on Exhibit D, sheet 1, filed by the respondent, notation is made in the capital stock section of the balance sheet to the effect that the 5,267,146.756 shares of common stock listed therein includes $83,945.45 par value of the scrip. For the purpose of arriving at the voting power attached to these securities I calculated the number of shares which this amount of par value of script might represent and substracted the result from the total number of shares of common stock reflected in the balance sheet.

Q. Now with respect to information set forth in the last column on that page, those percentages were computed by you and I take it in the same manner, more or less as the figures on the other page, or will you state, please, how you computed the percentages, the first 4.47 figure? *A.* This is again a simple mathematical calculation arrived at by dividing 300,000 by the total figures shown under the column headed "Voting power".

Q. Now, Mr. Flanagan, referring once again to the first

page of the exhibit for a moment, the figures set forth as capital surplus and earned surplus, do I understand that these figures merely reflect the sums set forth in the statements of the respondent and you have no knowledge as to whether these figures are actually the true capital sur- [*100*] plus or earned surplus? *A.* That is correct.

Mr. Berman: Mr. Examiner, I now ask that this exhibit be received in evidence.

The Examiner: I reserve decision on that motion until counsel has had an opportunity to cross examine.

Mr. MacLane: Shall I cross examine on this exhibit at this time?

Mr. Berman: Yes, I think the cross examination should be made at this time.

Cross Examination by Mr. MacLane.

XQ. Mr. Flanagan, does this exhibit merely represent a mathematical computation based upon the figures stated, or do you have an accounting theory back of the exhibit? *A.* It merely contains mathematical computation.

XQ. And one could make other combinations of the figures there stated and derive different mathematical results? *A.* By making other combinations that is possibly true.

XQ. Do you say possibly true or actually true? *A.* That is true. I will amend my statement.

XQ. For illustration, if you will refer to sheet 1 of your Exhibit 51 and would add to the dollar amount stated [*101*] as the par value of the common stock the figures for capital surplus and earned surplus and take the derived percentages in the last column, the total of those three merely as a matter of mathematics is 73.469, is it not? *A.* Yes.

XQ. And if that figure of 73.469 were related to the common stock—I am not asking you to agree it is correct to do it—but if it were related to the common stock then

73.469 per cent of the capitalization would have 78.30 per cent of the voting power, would it not? *A.* Yes.

XQ. And so I suppose you are willing to leave to the lawyers to argue whether capital surplus and earned surplus pertaining to the common stock after satisfying the demands of the preferred stock or whether they remain merely as some undistributed balance not applicable to any stock? *A.* I am perfectly willing to leave that to counsel.

Mr. MacLane: I object to the exhibit only as irrelevant and immaterial and not tending to prove or disprove any issue in this case. I have no reason to object on the ground that the exhibit is insufficiently identified.

The Examiner: Objection overruled and the exhibit is received. I will sustain objections to argumentative questions. I would like the examination to be confined to evidence.

Mr. MacLane: Is that a criticism of my examination?

[*102*] The Examiner: I didn't intend it as criticism.

Mr. MacLane: I am trying to be very brief.

Mr. Berman: Judge, I have no criticism to make of your examination.

[The document referred to was marked Commission's Exhibit No. 51 and received in evidence.]

Direct Examination (resumed) by Mr. BERMAN.

Q. Mr. Flanagan, I show you a tabulation which was marked as Commission's Exhibit No. 52 for identification. Have you a copy of this exhibit before you? *A.* I have.

Q. Are you familiar with the contents of this exhibit? *A.* I am.

Q. Was it prepared under your direction and supervision? *A.* Yes, sir.

Q. Now referring to the first four columns, starting with the first on the left-hand side of the sheet, will you please tell us where the information and figures there set

forth were derived? *A.* The annual report to stockholders prepared by American Power and Light Company for the year 1939 which is contained in Docket 30-144, Commission's Exhibit in this [*103*] proceeding No. 18-A, as Respondent's Exhibit F, part 1. This report contains the balance sheet of the company as at December 31, 1939 in which are described the various securities outstanding as at that date. These descriptions of principal amount, liquidating value and number of shares outstanding have also been verified by reference to item 8 (a) and 8 (b) of the Commission's Exhibit 18-A. The dollar amount listed in the fourth column of Exhibit No. 52 was obtained by reference to the aforementioned balance sheet in so far as they refer to long term debt outstanding, preferred stock outstanding, and common stock outstanding. They were also verified by reference to items 8(a) and 7(b). The dollar amount shown opposite capital surplus and earned surplus was obtained from the company's balance sheet for December 31, 1939.

Q. Now with respect to the figures set forth in the last column on this page, were those figures computed by you? *A.* They were.

Q. Were they computed in the same manner as the figures in the last column of the previous exhibit? *A.* They were.

Q. And those percentages total 100 per cent, is that correct? [*104*] *A.* That is correct.

Q. Will you kindly turn to the second page of this exhibit? *A.* Yes.

Q. Now referring to the figures and information set forth in the first four columns of the second page starting with the first column on the left-hand side will you kindly tell us where the information there set forth was derived? *A.* The description of the securities issued and

the amount of securities outstanding was obtained from the sources already mentioned.

Q. You mean the same Commission Exhibit 18-A? *A.* That is right.

Mr. MacLane: That is Exhibit 13-A?

The Witness: 18-A.

Mr. MacLane: 18-A.

The Witness: The figures in the third column were calculated by me to eliminate from the preferred stock $6 outstanding 26.2 shares of scrip and by eliminating from the number of shares of common stock outstanding 2114.27/50 shares of scrip. The calculations reflected in the fourth column were the simple mathematical calculations and were made in the manner previously described in connection with other calculations.

[*105*] *Q.* (By Mr. Berman): Now the figures for the statement represented in the fifth column, where did you derive that information? *A.* By reference to item 9 of Commission's Exhibit 18-A. It was found that American Power and Light Company and its sudsidiaries owned none of the securities listed in the first three columns of this statement.

Q. Now with respect to the information set forth in the last three columns on that page. Where was that derived? *A.* Docket No. 30-139, Commission's Exhibit in these proceedings 13-A contains the list showing the investment of Electric Bond and Share Company in its subsidiary companies.

The principal amount or number of shares of $5 preferred stock and common stock shown as owned by Electric Bond and Share Company was obtained from such item 9.

Q. And the percentages in the last column were derived by you in the same manner as those previously described for Exhibit 51? *A.* That is right.

Q. And looking at the total at the bottom of the last

column, 20.70 per cent being the percentage of voting securities owned by Electric Bond and Share Company, can you tell us whether you know how this figure compares with paragraph 24 of the answer filed by the respondent in this case? *A.* It is the same.

Q. Does the same figure appear in any other docu-
[*106*] ment included in evidence in this proceeding? *A.* The same figure appears in Exhibit A filed by the Electric Bond and Share Company with its U5S statement for the year 1939 which is contained in Docket No. 30-139 which in turn is this Commission's Exhibit 13-A.

Q. I believe it is Commission's Exhibit 13. I don't believe we have a 13-A, or am I mistaken? *A.* That is true. There is only one docket filed, Exhibit 13.

Q. Now with respect to the items of capital surplus and earned surplus shown on the previous page of this exhibit, you have no actual knowledge as to the state of this capital surplus or earned surplus, have you? *A.* No, sir.

Q. This is intended to merely reflect the statement made on the statements filed with this Commission by the respondent? *A.* That is correct.

Mr. Berman: Mr. Examiner, I ask this exhibit be received in evidence.

The Examiner: Same ruling. The ruling is reserved until cross examination has been had.

Cross Examination (*resumed*) *by* Mr. MacLane.

XQ. Mr. Flanagan, Exhibit No. 52 was prepared in the
[*107*] same manner and under the same conditions and with the same objective as Exhibit No. 51, which you have just identified before this and relates to American Power and Light Company capital and voting power in the same way that Exhibit 51 relates to the Electric Bond and Share Company capitalization and voting power? *A.* Yes.

XQ. And it is subject to the same statements as to its

method of preparation and possibility of different combinations? *A.* Yes.

XQ. Referring to the second sheet of Exhibit No. 52, each share of stock both preferred and common has one vote, I take it? *A.* Yes.

XQ. And the greater number of shares of common per dollar of capitalization in relation to the preferred is the factor that is responsible for the higher percentage of voting power in the common as related to capitalization than as attributable to preferred?

Mr. Berman: May I ask that question be read?

(The reporter thereupon read the pending question as recorded.)

Mr. MacLane: Is it too obscure?

Mr. Berman: Yes, Judge, it is a bit.

Mr. MacLane: Strike the question if you wish and I [*108*] will rephrase it.

XQ.(By Mr. MacLane): Roughly speaking, and without attempting to get down to mathematical nicety each share of common represents approximately $12.50 of ledger value of assets attributable to the common. Is that right?

Mr. Berman: Just a moment, please. Will you read that, please?

(The reporter thereupon read the pending question as recorded.)

Mr. Berman: May I ask did you arrive at that figure by dividing the total number of common shares and the dollar amount per books of the issuer, or how?

Mr. MacLane: Yes.

Mr. Berman: On the first page.

Mr. MacLane: On the first page.

Mr. Cohen: It seems to me that is a question to be left to argument of counsel.

Mr. MacLane: That is a proper question on cross examination.

Mr. Berman: I object to that question. If Judge MacLane wants to ask if each share of common and each share of preferred has one vote, that is all right and that would explain why common has more than preferred because there are more shares outstanding.

[*109*] Mr. MacLane: I have already asked that question.

The Examiner: Does the figure that the Judge mentioned appear in the exhibit, or is it a figure he has computed himself?

Mr. Berman: That is a figure the Judge has apparently computed. We don't show the per share value of common, either assets or ledger value at any point, but I suppose that could be done as a matter of arithmetical computation. I have no reason to think the Judge's computation is wrong. It seems to me the question should be directed to the figures on this exhibit.

Mr. MacLane: I am willing to rephrase the question if that is your objection.

The Examiner: All right.

Mr. MacLane: I will rephrase the question.

XQ. (By Mr. MacLane): Referring to sheet 1 of Exhibit 52, the 3,013,812.54 shares is represented on the asset side of the ledger of the American Power and Light Company by $37,434,351.29 bookvalue of assets, is that correct? *A.* No, sir.

Mr. Berman: Not on the asset side, the capital account side.

Mr. MacLane: I should not have said asset side. I meant the liability side.

[*110*] The Witness: In the capital stock account.

XQ. (By Mr. MacLane): In the capital stock account. *A.* That is correct, yes.

XQ. I am not an accountant. I will have to be excused. *A.* Yes

XQ. That of course is irrespective of the question of what capital surplus or earned surplus shown in additional amounts on sheet 1 should be attributed to common stock in arriving at another computation which somebody else might make as to distribution of voting power. Is that right? *A.* That is so.

XQ. And as I asked you with respect to Exhibit 51, the sum of the three figures shown in the last three columns in the last column of Exhibit 52 would, as I figure, amount to 17.601. Is this correct? Could you verify it for me? *A.* Yes.

XQ. Referring to sheet 2 of your Exhibit 52, distribution of voting power to both preferred and common stock owned by Electric Bond and Share Company follows exactly, does it not, the percentage of distribution of voting power attributable to those shares in the hands of other owners? [*111*] *A.* Yes.

XQ. That is, there is no mathematical distortion as applied to the two sets of computations made between those in the first three columns of Exhibit 52, page 2, and the last three columns? *A.* No, sir.

XQ. So that the ownership of 20.70 per cent of the voting stocks by Bond and Share carries with it 20.70 per cent of voting power? *A.* Yes.

Mr. Cohen: Will you please repeat that last question?

[The reporter thereupon read the preceding question and answer thereto as recorded.]

XQ. (By Mr. MacLane): One more question. It is perfectly clear from the record, but since the record is so voluminous I would like to ask directly. Following the last question a share of either preferred or common stock owned by Electric Bond and Share carries with it just exactly the same voting power as a share of either preferred or common stock owned by somebody outside the system entirely? *A.* I don't feel I am qualified to answer

that, Judge MacLane. This statement simply shows that if we make mathematical calculations of the number of votes per- [112] taining to the total securities outstanding and assume and also use one vote per share to those shares owned by Electric Bond and Share we arrive mathematically at the percentage of voting securities owned by Electric Bond and Share of 20.70.

XQ. Well, for arriving at that percentage the computation necessarily assumes that is the fact, does it not? *A.* I didn't intend to make any assumption by presenting this statement, Judge MacLane. It is merely a mathematical computation.

XQ. You don't make any contention otherwise? *A.* I make no contention one way or the other.

Mr. MacLane: That is all. I just make the same general objection. I admit that the exhibit is sufficiently identified. I object to its relevancy and materiality and not tending to prove or disprove any issue in this case.

The Examiner: The objection is overruled and the exhibit admitted.

[The document previously marked Commission's Exhibit No. 52 for identification is received in evidence.]

Mr. Cohen: Could I ask one question?

The Examiner: Yes.

[113] *XQ.* (By Mr. Cohen): I think about two questions back the question I asked to be read a moment ago as phrased by Judge MacLane was whether the 20.70 per cent of voting power is attributable to the common stock held by Electric Bond and Share Company. Does not the computation in the last column of this second page of Exhibit 52 indicate that the 20.70 is the sum of 19.62 applicable to common stock and 1.08 applicable to preferred stock? *A.* That is true.

Mr. Cohen: That is all.

Mr. Berman: Is the exhibit received in evidence?

The Examiner: It has been admitted.

Mr. MacLane: I assume, Mr. Examiner, it is neither necessary nor will any purpose be served by entering formal exception to the ruling?

The Examiner: I will say this, the record will show either party automatically has an exception to any adverse ruling by myself.

Mr. Berman: With respect to a tabulation marked for identification as Exhibit 52 I wish to say at this time, Mr. Examiner, it was discovered there was one figure there which while it was correct was susceptible of misunderstanding and in order to avoid any ambiguity a change has been made which I will point out to counsel and I ask [*114*] permission to substitute the corrected page for the other.

The Examiner: Very well.

Direct Examination (resumed) by Mr. Berman.

Q. I show you, Mr. Flanagan, a tabulation marked for identification as Exhibit No. 53. Have you a copy of that tabulation before you? A. I have.

Q. In its revised form? *A.* Yes.

Q. Are you familiar with the information contained in this tabulation? A. I am.

Q. And was it, like the others, prepared under your direction and supervision? A. It was.

Q. Will you tell us in a general way where you derived the information contained in the first four columns starting with the first column on the left-hand side of the page? *A.* Electric Power and Light Corporation has filed with its U5B registration statement for the year 1939 an annual report to stockholders for the year 1939 as Exhibit F, Part 4. This registration statement is Docket 30-143 and has been filed herein as Commission's Exhibit 25-A.

[*115*] *Q.* Commission's Exhibit 25-A in evidence? *A.* Yes. The long term debt issues described in the first column

of Exhibit 53, as revised, and the principal amount of such debt outstanding reflected in the second column of this exhibit were taken from item 8(a) and 8(b) of Commission's Exhibit 25-A.

The details with respect to preferred and common stocks outstanding and the liquidation value of the preferred stock was obtained both from the balance sheet filed by the company for December 31, 1939 and from item 8(b) of Commission's Exhibit 25-A.

Q. There you have a footnote No. 2 with respect to some figures in the fourth column. Will you please explain that footnote and where you derived the information on which it is based? *A.* This footnote supports the segregation of amounts in the capital stock accounts as between various classes of preferred stock and common stock outstanding. The note is similar to that contained in Commission's Exhibit 25-A on the bottom of item 8(b) as note (e) prepared by the respondent.

Q. And the percentages computed in the last column were computed by you in the same manner as percentages previously discussed? *A.* They were.

[*116*] *Q.* Will you kindly turn to the second page of this exhibit? *A.* Yes.

Q. Now in general was all the information on this page derived from the source designated at the bottom of the page, the U5S statement of Electric Power and Light Corporation and the U5S statement of Electric Bond and Share Company? *A.* Generally that is true except the calculations on this page were not obtained from those records.

Q. And those calculations are percentage of total voting power and percentage of voting securities which were computed by you in the same arithmetical manner as described previously for other percentages? *A.* Yes.

Q. Now is the figure of 46.97 per cent shown at the bottom of the last column as the percentage of voting securities owned by Electric Bond and Share Company reflected in respondent's statement bearing Docket No. 30-139-2? *A.* That is the same percentage as reflected in Exhibit A of that docket.

Q. That is slightly different from the percentage shown by the respondent in its answer in this proceeding, is it? *A.* It is.

[*117*] *Q.* Do you know what that figure is, the figure shown in the answer filed by the respondent in this proceeding? *A.* I do not.

Q. But there was a minor variation? *A.* There was a fraction of a percent.

Q. I may say that figure shown in respondent's answer was 46.85 per cent, but the figure you have employed is reflected in the respondent's U5S statement? *A.* Yes.

Q. And your figures speak as of December 31, 1939 whereas respondent's answer speaks as of May, 1940? *A.* Yes.

Q. As in the case of the previous exhibit you have no knowledge as to the correctness of the sum set forth for earned surplus from the previous page of the exhibit? *A.* No, sir.

Mr. Berman: I ask this exhibit be received in evidence.

The Examiner: Cross examine.

Cross Examination (resumed) by Mr. MacLane.

XQ. This Exhibit 53 was prepared in the same manner with respect to Electric Power and Light Corpora-
[*118*] tion as Exhibit 51 was prepared with respect to Electric Bond and Share Company? *A.* Yes.

XQ. And the same remarks made with respect to the manner of preparation and the elements used in the combinations with respect to Exhibit 51 would apply to Ex-

hibit 53 if specific questions were directed to them? *A.* Yes.

XQ. Just to clarify the record could you tell me without difficulty whether the inclusion in your issued and outstanding stock, including that held in the treasury in column 2 of Exhibit 53 represents $103,109.33 of what I will call stated value of preferred stock? *A.* That is the figure. I am not sure whether it should be called stated value.

XQ. And some shares of common stock? *A.* Yes.

XQ. Just between us laymen stated value is close enough for our purposes here? *A.* I am not sure that it is.

XQ. Can you give it another name? *A.* I think Mr. Murphy might classify that a little differently.

XQ. All I am getting at is this difference in percentage. [*119*] Mr. Murphy suggests leaving out the dollars that you have included here in column 3 of page 1 of Exhibit 53, 973 shares of $7 preferred stock and 902 shares of common stock which the company shows among its assets on the balance sheet as reacquired capital stock. *A.* The suggestion is to leave out the dollar value of stocks issued in what amount?

XQ. No, I am not suggesting whether they should be left out or included. I am just saying you have included in your figures in the third column of page 1 of Exhibit 53 these shares of stock. *A.* That is correct.

XQ. And your resulting percentage of voting power exercised by Bond and Share of 46.97 is affected to some extent by that inclusion by a fraction?

Mr. Berman: That is, if you included that figure in the tabulation on the second page as well, or is it excluded in setting forth the voting power on the second page, Mr. Flanagan?

The Witness: It is included.

Mr. Berman: It is included?

The Witness: Yes.

Mr. Berman: That is you included the stocks held in the treasury? The treasury stock is included?

The Witness: That is right.

[120] Mr. Berman: In the total voting power?

The Witness: That is right.

XQ. (By Mr. MacLane): Now the only question I am interested in is whether if in its answer the Electric Bond and Share Company has excluded that stock in its computation of voting power, whether that would be responsible for the difference between the 46.85 per cent assigned in its answer in the percentage and the 46.97 per cent used by you? *A.* I am not sure.

XQ. It might be so, might it not? *A.* It might, yes.

XQ. It seems reasonable that difference in treatment might account for such a slight difference in percentage? *A.* It would just about,

Mr. MacLane: I have noted the same general objection. I don't object to the exhibit as not sufficiently identified. I object generally as to its materiality and relevance in the case.

The Examiner: Overruled and the document is admitted.

[The document referred to previously marked for identification Commission's Exhibit No. 53 is received in evidence.]

[121] *Direct Examination (resumed) by* Mr. Berman.

Q. Mr. Flanagan, I show you a tabulation marked as Commission's Exhibit No. 54 for identification and I ask you whether you have a copy of that before you? *A.* I have.

Q. Are you familiar with the contents of this tabulation? *A.* I am.

Q. And it was prepared under your general supervision and direction as were the others? *A.* It was.

Q. And will you state whether in general the informa-

tion set forth in the first four columns of this exhibit was derived from the sources stated at the bottom of the page, the U5S statement of National Power and Light Company, Commission's Docket 30-146-2-1, Exhibits 8 and 8-B? *A.* That is right.

Q. Do you know what the number of the Commission's exhibit is this document represents? *A.* Exhibit 32-A.

Q. And it was from that Commission's Exhibit 32-A the information set forth in the first four columns was derived? *A.* That is right.

[*122*] *Q.* With respect to the footnote appended at the bottom of the page, footnote 2, will you tell where you received the information as to that? *A.* That footnote is similar to the one contained in Commission's Exhibit 32-A at the bottom of item 8(b). It is given as note C on page 14 of this exhibit.

Q. Now the percentages of total capitalization were computed by you in the same mathematical manner discussed previously, were they? *A.* They were.

Q. Now with respect to earned surplus you do not know whether that exists or does not exist except as reflected in the statement of the company. Is that correct? *A.* That is right.

Q. Turning to the second page of that exhibit, Mr. Flanagan, will you state whether the sources of the information on which the figures in this exhibit are based were derived from were those stated at the bottom of that page? *A.* They were.

Q. Can you translate these document numbers for us in terms of Commission's Exhibits in this proceeding? *A.* 30-146-2-1 is Commission's Exhibit 32-A. Docket 30-139-2 is Commission's Exhibit 13.

Q. And it was from that source that you derived the information set forth on this page? [*123*] *A.* That is true.

Q. Except as to the computations of percentages and

those were derived by you in the same mathematical manner as the others described? *A.* They were, but they were also verified by Exhibit A filed in Docket 30-139.

Mr. Berman: I ask that that exhibit be received in evidence.

The Examiner: Cross examine.

Cross Examination (resumed) by Mr. MacLane.

XQ. This exhibit was prepared in the same manner and with the same assumptions with respect to the National Power and Light Company as Exhibit 51 with respect to Bond and Share? *A.* Yes.

XQ. And without repeating the same general comments as to the methods of preparation and mathematical combinations that may be made? *A.* Yes.

XQ. In this company, apparently, according to your exhibit, the preferred stock had no vote. Is that correct? *A.* That is correct.

XQ. So that voting power is distributed mathematically and proportionately to the common stock outstanding? [*124*] *A.* Yes.

XQ. That follows either with respect to the stock shown on page 2 as owned by Bond and Share as to the stock owned by others? *A.* That was a mathematical computation.

Mr. MacLane: Sufficiency of identification admitted. Objected to on the general ground of irrelevancy and immateriality directed to previous exhibits.

The Examiner: Objection overruled. It is admitted.

[The document referred to previously marked Commission's Exhibit No. 54 for identification is received in evidence.]

The Examiner: I will ask at this time, it is now 10:40 A. M., for the record if there is any person in the room who desires to be heard in this matter. [After a pause.] The

record will show there is no response. Have any communications been received by the Commission so far as you know, Mr. Berman?

Mr. Berman: Not as far as I know. I would like to state, Mr. Examiner, with respect to Exhibit 55 for identification, it was found that an error had crept in with respect to one figure. The change has been made and I should like permission to substitute a corrected page. I will show counsel a copy which has been corrected. Have I permission to have the corrected copy sub- [*125*] stituted, Mr. Examiner?

The Examiner: You may.

Direct Examination (resumed) by Mr. Berman.

Q. Mr. Flanagan, I show you a copy of a tabulation marked as Commission's Exhibit 55 for identification and I ask you whether you have a copy of this tabulation as revised before you? *A.* I have.

Q. And are you familiar with the contents of this tabulation? *A.* I am.

Q. It was prepared under your direction and supervision in the same manner as the others? *A.* It was.

Q. Will you tell us whether the information was derived from the sources stated at the bottom of that page, namely, from the U5S statement File No. 139? *A.* It was.

Q. Can you translate that file into terms of Commission exhibits in evidence in this proceeding? *A.* That is Commission's Exhibit 13.

Q. And all the figures shown there and the information on which the footnotes were based were derived from Commission's Exhibit 13 in evidence? [*126*] *A.* No, sir; there are two calculations at least that we have made.

Q. Will you explain, please, which those were? *A.* Item 9 of Docket 30-139 on page 14 lists the investments of Electric Bond and Share Company in its subsidiary

companies. On Exhibit 55 the data with relation to the investments of Electric Bond and Share Company in American Power and Light Company is exactly as shown on item 9 of Docket 30-139. The details of the investments in Electric Power and Light Corporation as to the description of the securities and the number of shares agrees with the data contained in item 9. The calculation of the value per books of the issuer applicable to these securities of Electric Power and Light Corporation has been made on the basis of note B at the bottom of page 14 of Commission's Exhibit 13 in this proceeding. $100 per share has been assigned to each class of preferred stock of Electric Power and Light Corporation owned and the value assigned to the common stock of Electric Power and Light Corporation was arrived at in this manner.

Q. And that is the information which is substantially reflected? *A.* I want to explain how I arrived at that.

Q. Yes, all right. *A.* Note B shows that on the basis explained in such note the value of the common stock of Electric Power [*127*] and Light Corporation would be $70,158,672.74. The common stock of Electric Power and Light Corporation owned by Electric Bond and Share represents 57.4 per cent of the total number of shares outstanding. This percentage has been compiled to the total value of the common stock and the resultant figure of $40,271,078 has been inserted in this Exhibit 55.

Q. As the value for the common stock? *A.* As the value per books of the issuer for its common stock owned by Electric Bond and Share Company.

Q. I see. *A.* A similar procedure was followed with respect to the value of the common stock of National Power and Light Company as calculated in the manner described in Note B of item 9.

In this case a percentage of 46.6 was compiled to the total value for the common stock reflected in Note B to

represent the portion of that value applicable to the common stock of National Power and Light Company owned by Electric Bond and Share Company.

Q. Are those the only computations that have been made on this exhibit, Mr. Flanagan? *A.* Yes. The figures reflected in the last column of Exhibit 55 agree with those shown in item 9 of Commission's Exhibit 13.

[*128*] *Q.* Except, as I understand it, you did total the last few figures above the total shown? *A.* That is right.

Mr. Berman: I ask that this be received in evidence, Mr. Examiner.

The Examiner: Cross examine.

Cross Examination (*resumed*) *by* Mr. MacLane.

XQ. Mr. Flanagan, the second column of your Exhibit 55 under the heading "Value per books of issuer," as I understand it uses the value of the capital stock of these different companies stated as a liability upon their balance sheet subject to computations you have made in segregating a value for the preferred from the total value where no segregation was made on the books as between preferred and common. Is that correct? A. That is right.

XQ. You didn't include, did you, in computing the value per books of issuer the value of reserves or surplus? *A.* No, sir.

XQ. If you were computing the book value of shares of stock in this or any other corporation, assuming a simple case like that of the average bank, for instance, in which there was nothing but common stock, you figure your book value per share according to the total assets after deducting liabilities other than capital, don't you? [*129*] *A.* Yes.

XQ. Would that be the really proper way to do it here? *A.* This is merely a compilation of figures either taken directly from the records submitted by the respondent or

calculated in accordance with the methods which they have also used.

Mr. Berman: May I interpose, Judge, just to clarify that. The question that Judge MacLane asked, it would be true, would it not, Mr. Flanagan, if one were seeking to arrive at book value in the sense of asset value of the stock of a corporation and one would divide it into the item "Assets" after subtracting liabilities. You didn't seek to do that?

The Witness: No, sir.

Mr. Berman: You were interested in that figure as per books of issuer with reference to value as per books of the issuer as stated in the capital account?

The Witness: That is correct.

Mr. Berman: It doesn't purport to be the book value in the asset sense?

The Witness: No, sir.

Mr. MacLane: Mr. Berman is anticipating my next question whether a truly descriptive title there would not be stated value of capital stock or something like that.

[*130*] In other words, doesn't your title, and I don't mean this was intentional —

The Witness: [interposing] No, sir.

XQ. (by Mr. MacLane): Doesn't your title connote something that your figures below your title really don't agree with? *A.* That title, Judge MacLane, is the one used in the U5S registration form. I merely copied it as recorded in that form.

XQ. Whoever is responsible for its use it really means, as I say, stated value of the capital in the capital account? *A.* That is what this column represents.

XQ. As distinguished from any calculation of book value per share? *A.* That is right.

Mr. MacLane: That is all, thank you. I have no objection to this exhibit, subject to the explanation which has heretofore been given.

The Examiner: It is admitted in evidence.

[The document previously marked Commission's Exhibit No. 55 for identification is received in evidence.]

[131] *Direct Examination (resumed) by* Mr. Berman.

Q. Mr. Flanagan, I show you a tabulation marked for identification as Commission's Exhibit 56, and I ask you whether you have before you a copy of this exhibit? *A.* I have.

Q. And are you familiar with the contents thereof? *A.* I am.

Q. Was it prepared under your direction and supervision and in the same manner as the other preceding exhibits? *A.* Yes.

Q. Will you state whether the information on which this tabulation is based and the figures contained therein were obtained from the sources indicated at the bottom of that page? *A.* They were.

Q. Will you please relate the sources stated at the bottom of that page to the exhibit number in this record? Can you do that for us? *A.* This is Commission's Exhibit 13.

Q. Commission's Exhibit No. 13? *A.* 13.

Q. Do you have any more specific reference in the U5S form for the page reference for that docket? [132] *A.* Yes. These figures were taken from item 9, page 14 of Commission's Exhibit 13.

Q. Item 9? *A.* Page 14.

Mr. Berman: Excuse me, Judge MacLane, did you get that? Mr. Flanagan has stated that the information was derived from Docket 30-139, item 9, page 14. That is Commission's Exhibit 13.

Mr. MacLane: Exhibit 13.

Mr. Berman: But he is giving you the page reference.

Mr. MacLane: Thank you.

Q. (by Mr. Berman): And the figures shown on this page were derived from that source, Mr. Flanagan? A. They were.

Mr. Berman: I ask it be received, Mr. Examiner.

The Examiner: Cross examine.

Cross Examination (resumed) by Mr. MacLane.

XQ. Just a few questions to make this clear. Your first column on this Exhibit 56 is what you call ledger value on books of Bond and Share? *A.* Yes.

XQ. And your second column, taking a specific illustration, 51,840 shares of preferred stock of American Power [133] and Light Company was carried on the books of Bond and Share at $1,556,237? *A.* Yes.

XQ. And your second column shows $532,000 there as cost to the system company originally acquiring the security means that some other company in the Electric Bond and Share system had originally at some time acquired equivalent assets which were converted into these shares of preferred stock in American Power and Light? A. I am not well enough acquainted with it to say yes to your entire statement, Judge MacLane.

XQ. (by Mr. Berman): Is your difficulty, Mr. Flanagan, it need not have been some other company? It might have been Electric Bond and Share. I mean whichever company in the system first acquired it, it might have been Electric Bond and Share. That was the cost to it, $532,000. Is that it? A. That is one difficulty and the other is Judge MacLane's term "equivalent assets."

XQ. I didn't hear that. *A.* I also have difficulty with Judge MacLane's term "equivalent assets."

Mr. Berman: I see.

XQ. (by Mr. MacLane): Well I merely wanted to get this clear, by [134] cost to system company you mean cost of these assets. I will forget the word "equivalent." *A.* Yes.

XQ. Although I think it was equivalent in some cases. You mean cost of these assets to some other company either to the Electric Bond and Share Company or some other company in the Electric Bond and Share Company system? *A.* That is what I mean, yes.

XQ. And that cost shown in the second column might have been a day, a year, five years or ten years or twenty years for that matter prior to the later acquisition and entry upon the books of Electric Bond and Share Company of the figures shown in the first column? *A.* It might have been, yes.

XQ. The time element is not taken into consideration? *A.* No, sir.

XQ. Furthermore it might not have been the Electric Bond and Share Company but may have been some other holding company or even some operating company?

Mr. Berman: Of the Bond and Share system.

XQ. (by Mr. MacLane): Of the Bond and Share system. *A.* That is right.

[*135*] *XQ.* You embrace in your description of the Bond and Share system in this second column — specifically does it include American Gas and Electric Company and its subsidiaries as a part of such system? *A.* These are figures reported by the respondent. What they have included I am not familiar with.

XQ. Are the particular transactions reflected in the statements from which you compiled these figures? *A.* These are figures specifically included in item 9 of Electric Bond and Share U5S registration statement.

XQ. I don't know much about the U5S statement. That doesn't mean a great deal to me, but I assume, and you may tell me whether I am correct or not, that if these figures are correct as stated in the U5S statement in some sort of summary statement that the supporting detail was included in some schedule or statement in the U5S state-

ment. *A.* I don't think these figures are supported by any other schedule in the U5S statement.

XQ. (by Mr. Berman): Am I correct, Mr. Flanagan, in stating this information is set forth in the form you have given it, that is, it represents the cost to the system company originally acquiring the security without any explanation of the transactions involved, and you have merely copied those [*136*] figures? *A.* I would like to refer to the docket to make sure there is no text explanation of this item before I answer.

The Examiner: We will take five minutes recess at this time.

[Short recess.]

[*137*] The Examiner: Proceed, gentlemen.

Mr. Berman: You had asked a question Judge MacLane, as to whether the transactions which accounted for the difference between the cost to the System Company originally acquiring and the carrying value to Electric Bond & Share Company would be found reflected in the statement filed by the respondents. Have you inquired into that, Mr. Flanagan, and discovered any information on that subject?

The Witness: Yes, sir, I find that Docket 30-139, which is Commission's Exhibit No. 11 in these proceedings, contains a supplement to Exhibit D, which contains lengthy explanations dealing with revaluations. It appears that some of these items at least have explanations in this amendment, but I have not checked it through in detail to see to what extent they are explained.

Mr. MacLane: Then I won't take the time to do that at this time, but as I understand, we may develop from the exhibits already introduced the detail of these transactions which resulted in discrepancies or differences between carrying value in the first column and cost to the System Company in the second column.

Mr. Berman: That file is in evidence and to the extent

that it contains information, that information is [138] available to us. Is that correct, Mr. Flanagan?

The Witness: That is correct.

Mr. Berman: May I state, Mr. Examiner, that that is one of the benefits of having a statement like the U5S in evidence because of the historical data it contains, which bears on these matters. That is in reference to our conversation yesterday.

Mr. MacLane: No other objections. I would like to interpose the same objection of absence of relevancy and materiality to the issues in this proceeding.

The Examiner: In getting these figures you used practically the same titles or descriptions in your document that were found in the source material?

The Witness: Yes, sir.

The Examiner: The objection is overruled. Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 56]

Mr. MacLane: I would like to take the liberty of referring to Mr. Berman's last remark as to what is in and what is not in these exhibits. The great difficulty I find is that neither side knows what is in them and it rather emphasizes the position I took earlier in the hearing that at some stage in the case we should know what the other fellow relies on.

[139] Mr. Berman: I would like to note that it was Mr. Murphy who pointed out the information in that statement. He at least knows, if nobody else does.

The Examiner: I have been wondering whether or not it would be possible before this hearing is concluded, so far as the Commission's case, is concerned, for Commission's counsel to state for the record those portions of these exhibits that are material and by reference to particular item numbers, sections or exhibits, some of it might be eliminated in that way.

Mr. Berman: May we reserve further discussion on this

until the completion of the other portion of the evidence and then I take it this will all become germane?

The Examiner: The reason I make the suggestion now is that you might have some of your assistants or colleagues perhaps doing work along that line in the mean time.

Mr. Berman: For reasons I shall explain when our discussion takes place later, that can not be done, Mr. Examiner. May I proceed at this point?

The Examiner: Yes.

Direct Examination (resumed) by Mr. Berman.

Q. Mr. Flanagan, I show you a document marked for [*140*] identification as Commission's Exhibit 57. I ask you whether you have a copy of that exhibit before you? *A.* I have.

Q. And are you familiar with the contents thereof? *A.* Yes, sir.

Q. Was it prepared under your general supervision and direction in the same manner as the other exhibits? *A.* Yes, sir.

Q. Will you tell us whether the information and figures set forth in this tabulation were derived from the source stated at the bottom of the sheet? *A.* Yes, and as further identification of the source —

Q. May I interrupt, Mr. Flanagan? Will you kindly identify to us by relating to the exhibits in evidence, File 30-139? *A.* This is Commission's Exhibit 13.

Q. Commission's Exhibit 13 in evidence. Thank you, Mr. Flanagan. Will you explain where else you derived this information? *A.* The investments listed in Exhibit 57 were taken from Item 9 of Commission's Exhibit No. 13. That statement must be amplified to this extent: That I have added to the investments in United Gas Corporation, [*141*] an unsecured demand note of 6 per cent in the principal

amount of $25,925,000, and an account payable by United Gas Corporation to Electric Bond & Share Company in the amount of $3,000,000. In all other respects these figures appear in Item 9 of Commission's Exhibit 13.

Q. Where did you derive the figures to which you just referred, Mr. Flanagan? *A.* The balance sheet of Electric Bond and Share Company as at December 31, 1939, reflects an item under investment securities and advances, as follows: "United Gas Corporation, $28,925,000."

Q. And that balance sheet is in evidence as Commission's Exhibit No. 13? *A.* It is.

Q. Very well, sir.

Mr. Berman: I ask that that exhibit be received in evidence, Mr. Examiner.

The Examiner: Cross examination?

Cross examination (resumed) by Mr. McLane.

XQ. Just as in the case of the preceding Exhibit No. 56, the carrying value to Electric Bond and Share Company shown in the last column represents the ledger value or cost to Electric Bond and Share at the time of acquisition [*142*] by Electric Bond and Share, subject to any adjustments which might have been made in any case since? *A.* To be more specific, Judge MacLane, they represent the values reported to this Commission as those carried on the books of Electric Bond and Share Company for each investment listed in this Exhibit 57.

XQ. To make my question a little more simple, they represent ledger values as shown on the books of Electric Bond and Share Company, regardless of the time of entry, they show what is presently carried on the books? *A.* Ledger values as at December 31, 1939.

XQ. And the value per books of issuer represents the stated value of the securities as a liability of the issuer at the time of issue? *A.* Not necessarily, sir.

XQ. Well, that would be true unless there was some restatement of that capital liability at some subsequent time, wouldn't it? *A.* That might be true. What the figures reflected here represent is the value per books of issuer reported to us in Item 9, Commission's Exhibit 13. What adjustments may have been made in there from the time of acquisition, I have no knowledge of.

XQ. Take as a simple illustration the first page. [*143*] There is no relationship between the time of the entry upon the books of the Florida Power & Light Company as a liability of $417,000 face value of its bonds at $417,000, and the time that those bonds were acquired by the Electric Bond and Share Company and the price paid by the Electric Bond and Share when it acquired the bonds? A. Generally speaking I would say no, but they may have been issued and acquired simultaneously. Of that I have no knowledge.

XQ. All I am getting at, Mr. Flanagan, is that there is no essential relationship in time between the liability transaction reflected on the books of the issuing company and the carrying value to Bond and Share as reflected on its books. *A.* Not necessarily, no, sir.

XQ. Just a hasty inspection of this exhibit, and I have not analyzed it, would indicate that the excess of carrying value to Bond and Share shown in the last column, over the value per books of issuer, is represented by the item "Common Stock and Option Warrants of United Gas Corporation" shown about four or five lines from the bottom. Is that a fair statement?

Mr. Berman: Might I ask that that question be read?

The Examiner: Read the question.

[The last question was thereupon read by the reporter.]

[*144*] The Witness: Yes, it is.

XQ. (by Mr. MacLane): Do you happen to know, or do you know, that there is a very radical write-down of the stated values of the common stocks of United Gas Corporation on that company's books?

Mr. Berman: Answer only if you know, Mr. Flanagan.

Mr. MacLane: That is all I asked him.

The Witness: Not definitely, Judge MacLane.

XQ. (by Mr. MacLane): Consequently, you could not say whether this carrying value Bond and Share represented in the last column of the common stocks and option warrants of United Gas corresponds or does not correspond with the original liability value, if I use correct term, stated on the books of United Gas Corporation at the time of the original issue of that stock? *A.* No, sir.

XQ. One other question with respect to such items of stocks, and I believe that is the only one. The same question that I asked with respect to one of the earlier exhibits might be raised here, might it not, as to whether this value per books represents anything other [*145*] than the stated liability value of the common stock ex surplus and reserves? *A.* That is so. This might more properly be stated as the value of the securities reflected in the capital stock account where such items listed are stocks.

XQ. That being the only item of stock, I suppose that that is the only item here to which that remark would be applicable? *A.* That is true.

Mr. MacLane: Just a general objection that the exhibit is not relevant or material to any issue in the proceeding.

The Examiner: Objection overruled. Received.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 57.]

Direct Examination (resumed) by Mr. Berman.

Q. Mr. Flanagan, I show you a tabulation consisting of two sheets marked for identification as Commission's Ex-

hibit No. 58, and I ask you whether you have before you a copy of this tabulation? *A.* I have.

Q. Are you familiar with the contents thereof? *A.* Yes, sir.

Q. Was it prepared under your general direction and supervision in the same manner as the other exhibits [*146*] previously introduced? *A.* Yes, sir.

Q. Will you tell us whether the information and the figures on which this tabulation is made, and of which it is comprised, were derived from the source stated at the bottom of the second page? *A.* They were.

Q. And will you relate that docket number to the exhibits in evidence in this proceeding? A. That is Commission's Exhibit 18 (a).

Q. 18 (a)? *A.* Yes, sir.

Q. Can you more precisely identify in that file the pages or otherwise sources from which the information was derived? *A.* These details were obtained from Item 9, page 19 of Commission's Exhibit 18 (a).

Q. And all the information shown in this tabulation came from that source, Mr. Flanagan? *A.* It did.

Mr. Berman: I ask that it be received in evidence, Mr. Examiner.

The Examiner: Cross examine.

[*147*] *Cross Examination (resumed) by* Mr. MacLane.

XQ. This is the same type of exhibit with reference to American Power and Light Company investments as Exhibit 57 was with respect to Electric Power and Light Company investments? A. Yes, sir.

XQ. Except that it includes the investments of American Power and Light in its direct subsidiaries, including their stocks, whereas No. 57 included for the Bond and Share only its investments in the subsidiaries of the holding companies? *A.* That is right.

XQ. Now, so far as the stocks are concerned, the same question would be asked and I assume the same answer would be returned, as to the second column, "Value Per Books of Issuer".

It represents the stated liability value of the stock as a segregated liability, and not any calculation of book value of the stock resulting from an analysis of the entire balance sheet? *A.* That is so, yes, sir.

XQ. And it excludes the items of surplus reserves or anything of that kind? *A.* Yes, sir.

[*148*] *XQ.* Now, there is not necessarily a time relationship between the value placed on these liabilities by the issuer at the time of the issue, and the time the American Power and Light Company took them over and entered the so-called carrying value on its books as an asset? A. No, sir.

XQ. They might have been contemporaneous or might have been widely separated in time? *A.* Yes, sir.

XQ. Just for illustration, if you go about half way down page 1 you find the item "Montana Power Company, common stock, $49,000,000," on the books of the issuer, and $98,000,000 on the books of American Power and Light Company. Do you or do you not know, as a fact, that the Montana Power stock was issued many years prior to its acquisition by American Power and Light? *A.* I understand that to be a fact, yes, sir.

XQ. And do you or do you not know that the $98,917,000 entered as carrying value to American Power and Light was actually paid in stated value of securities issued by American Power and Light for that stock? A. Not specifically. I would not answer yes to that question, sir.

XQ. You don't know that that is not the case? [*149*] A. I do not.

XQ. Summarizing the whole thing as shown by your total, the total carrying value to American Power and

Light of all these securities on subs is $248,949,560.73, to be accurate, and the value on the books of the issuers is about $9,000,000 in excess of that, or $247,085,610.85. Is that correct? *A.* That is right.

XQ. One purely technical question. I suppose your heading should be "Carrying Value," instead of "Company Value," should it not? A. Yes, sir.

Mr. MacLane: It may be corrected if you wish, Mr. Berman.

Mr. Berman: Thank you.

XQ. (by Mr. MacLane): I would like to ask just one more question. In the event there was in any case a restatement of the item "Value per books of issuer" on the books of the issuing company, the effect of that restatement would be included in this column, "Value per books of issuer," would it not? *A.* I understand so, yes, sir.

XQ. And similarly, if there was at any time a restatement of ledger values on the books of American, that would be reflected here because this is as of December 31, [*150*] 1939? *A.* Yes, sir.

XQ. It does take into effect or reflect any changes made on the books of either company subsequent to the original transaction? *A.* I understand it does, yes, sir.

XQ. A current statement as of December 31, 1939, and not in any sense a historical statement? *A.* Yes, sir.

Mr. MacLane: Just for the record, the general objection of irrelevance and immateriality.

The Examiner: Overruled; admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 58.]

Direct Examination (resumed) by Mr. BERMAN.

Q. Mr. Flanagan, I show you a copy of the tabulation marked Commission's Exhibit 59 for identification, and I ask you if you have before you a copy of this tabulation? *A.* I have.

Q. And are you generally familiar with the contents thereof? *A.* Yes, sir.

Q. And was it prepared under your supervision and direction the same as the exhibits previously introduced? [*151*] *A.* Yes, sir.

Q. Can you tell us whether or not the figures set forth on this exhibit were derived from the source indicated at the bottom of the page? *A.* They were.

Q. And will you relate that file number to the exhibits in evidence in this proceeding? *A.* That is Commission's Exhibit 25 (a).

Q. And can you identify with greater particularity the part of the file in which these figures are to be found? *A.* These figures can be found in Item 9, page 26 of Commission's Exhibit 25 (a).

Q. And all the figures on this page and the information contained in the footnote, were derived from that source? *A.* They were.

Mr. Berman: I ask that it be received in evidence, Mr. Examiner.

The Examiner: Cross examine.

Cross Examination by Mr. MacLane.

XQ. This is the same type of exhibit as to Electric Power and Light Corporation, as No. 58 was with respect to American Power and Light Company? *A.* Yes, sir.

XQ. Prepared in the same manner and subject to the [*152*] same observations that were discussed between us with respect to American Power and Light? *A.* Yes, sir.

XQ. A summary of this exhibit is shown by the figures at the foot, or perhaps I should say a totalization of those figures indicates that the carrying value to Electric Power and Light Corporation of these securities is approximately $15,000,000 less than the value assigned to them on the books of the issuing companies? *A.* Yes, sir.

Mr. MacLane: The same general objection, that the exhibit is not relevant or material to any issue in this case.

The Examiner: Objection overruled. Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 59.]

Mr. Berman: Off the record.

[Discussion off the record.]

Direct Examination (resumed) by Mr. BERMAN.

Q. Mr. Flanagan, I show you a tabulation marked for identification as Commission's Exhibit No. 60, and I ask whether you have before you a copy of that document? *A.* I have.

Q. And are you familiar with the contents thereof? [153] *A.* Yes, sir.

Q. And was it prepared under your direction and supervision in the same manner as the other exhibits previously introduced? *A.* It was.

Q. Will you state whether the source from which the figures and information used in this exhibit were derived, is that stated at the bottom of the page? *A.* It is.

Q. Will you relate that source to the exhibit in evidence in this proceeding? *A.* That is Commission's Exhibit 32(a).

Q. And were all the figures shown here derived from that source? *A.* They were.

Q. Including the information stated in the footnote? *A.* Yes, sir.

Mr. Berman: I ask that it be received, Mr. Examiner.

The Examiner: Cross examine.

Cross Examination (resumed) by Mr. MACLANE.

XQ. This is a similar exhibit for National Power & Light Company investments as Exhibit 58 for American Power & Light and Exhibit 59 for Electric Power & Light? [154] *A.* Yes, sir.

XQ. Prepared in the same manner and subject to the same observations as to the various figures shown? *A.* Yes, sir.

Mr. MacLane: The same general objection. It is irrelevant and immaterial to any issue in the case.

The Examiner: The same ruling. Admitted.

[The document referred to was received in evidence as Commission's Exhibit No. 60.]

Direct Examination (resumed) by Mr. BERMAN.

Q. I show you, Mr. Flanagan, tabulation marked for identification as Commission's Exhibit No. 61, and ask you if you have before you a copy of that tabulation? *A.* I have.

Q. Are you familiar with the contents thereof? A. Yes, sir.

Q. Was it prepared under your supervision and direction in the same manner as the exhibits previously introduced? *A.* Yes, sir.

Q. Will you state whether the source set forth at the bottom of the page is the source from which you derived the information on which these figures were based? *A.* Yes, sir.

[*155*] *Q.* Is that source the annual reports in evidence in this proceeding? *A.* There are several reports. I will give the reference data—

Q. They are in evidence as part of the U5S statements of the various respondents for 1939? *A.* Yes, sir.

Q. And were all the figures shown on this tabulation taken from the sources indicated? *A.* They were.

Q. Referring to the second column from the left, headed "American Power & Light Company," will you take the figures in order, starting from the first one and going down the line, and explain to us what these figures represent? *A.* The balance sheet contained in the annual report of Ameri-

can Power & Light Company for the year 1939 reflects under "Capital stocks" preferred stocks of American Power and Light Company issued in the aggregate amount of $177,145,326, and common stock in the stated amount of $37,434,351. Immediately below those figures is shown an item of preferred stocks issued by subsidiaries in the amount of $111,622,200. Below this item is listed a common stock issue of subsidiaries in the stated amount of $425,076.29. [156] This same consolidated balance sheet reflects outstanding long-term debt of American Power & Light Company in the aggregate amount of $46,299,000, and of subsidiaries in the aggregate amount of $312,995,000. The total at the bottom of this column is a simple mathematical calculation, adding together the capital stocks and long-term debt outstanding as reflected above.

Q. And the figures set forth in the columns headed "Electric Power & Light Corporation," and "National Power & Light Company," were similarly derived and represent the same method of computation? *A.* That is right.

Q. And the final column is a mere totaling of the figures horizontally across the page? *A.* Yes, sir.

Mr. Cohen: Mr. Flanagan, do the figures of securities outstanding include securities held by Electric Bond and Share Company?

The Witness: Yes, sir.

Q. (by Mr. Berman): Are there any other statements you wish to make with respect to this tabulation, Mr. Flanagan, or do you feel you have explained how it was derived? *A.* There is nothing further that I have to add.

Mr. Berman: I ask that it be admitted, Mr. Examiner.

[157] The Examiner: Cross examine.

Mr. MacLane: What are the exhibits?

Mr. Cohen: 18(a), 35 (a), and 32 (a).

Mr. MacLane: No cross examination and no objection.

The Examiner: Admitted.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 61.]

Mr. MacLane: Now, if the Examiner please, and gentlemen for the Commission, I would be perfectly willing to agree that you make an omnibus offer of Exhibits 62 to 66, inclusive, and simply state what they are and I will agree that they may be admitted subject to any check of the figures, and subject also to a very definite objection that these exhibits and each of them are not relevant or material to any issue in this case. I suppose it is premature for me to state that objection more fully until you have identified them, but I am willing to make that stipulation if it will save any time and be of any convenience.

Mr. Berman: I take it, Mr. Examiner, that an objection to materiality and relevance will always be in order to any of these exhibits so far as the respondents are concerned. I wish to state that Exhibit 62 is a tabulation showing expense of Electric Bond and Share Company for the twelve months period ending December 31, 1939; Exhibit 63 is a [*158*] statement of expenses of American Power & Light Company for the 12 months ended December 31, 1939; Exhibit 64 is a statement of the expenses for the 12 months ended December 31, 1939, of Electric Power & Light Corporation; and Exhibit 65 is a statement of the expenses of National Power & Light Company for the 12 months ended December 31, 1939; and Exhibit 66 is a statement of expenses of Ebasco Services, Inc., for the twelve months ended December 31, 1939.

Direct Examination (resumed) by Mr. Berman.

Q. Will you state, Mr. Flanagan, in general, the source of the information on which these various exhibits are based? *A.* Each of the exhibits, 62 to 65, inclusive, was

obtained from Form U14-3 filed by the company for which the exhibit has been prepared.

Q. All of which are in evidence in this proceeding? *A.* All of which are in evidence in this proceeding. Commission's Exhibit 66 was prepared from data contained in Form U-13-60, filed with this Commission by Ebasco Services, Inc., which form is an exhibit in this proceeding.

Q. Now, do I understand correctly, Mr. Flanagan, that these tabulations purport to set forth all the expenses of these companies with the sole exception of expenses of servicing their respective bond issues or debts, [*159*] to the extent if they have any outstanding? *A.* So I understand.

Q. That item is not included herein? *A.* That is right.

Mr. Berman: Will they be received at this time, Mr. Examiner?

Mr. MacLane: I would like to enter the objection of respondents to Exhibits 62 to 66, inclusive, and each of them, on the ground that they are neither material nor relevant to any issue in this case.

I don't propose to take up the time with argument, and I don't care whether these things are in the files of this case or not—they are all in these other files—but the point of my objection specifically is that it seems to me these exhibits interject an element into this case which should not be here, and which if it is to remain in the case as an element, may involve us in a good deal of testimony and a good deal of time before we get through.

The Examiner: What do you refer to, Judge?

Mr. MacLane: I refer simply to this: We are here in response to a notice and order which initiates an inquiry into the single question of whether the corporate structure of three named companies, as they remain at this time designated, unduly complicates the structure, or unfairly distributes the voting power of the holding company

system. [160] Now, if these exhibits are laying the foundation for any claim on the part of counsel for the Commission that the existence of some one of these companies involves or creates an unnecessary expense to the system, then it seems to me we are adding something that is not in the statute and, while that may not be very important because presumably the Examiner in his report and the Commission will eventually disregard it, it is casting upon us a burden which should not be cast upon us, namely that of justifying the expenses.

The Examiner: What do you say to that, Mr. Berman?

Mr. Berman: Mr. Examiner, I want to say that these exhibits bear directly on the issue to which this proceeding was initially confined, namely, whether it is necessary to discontinue the existence of American Power & Light Corporation, Electric Power & Light Corporation, and National Power & Light Company in order that the structure of Electric Bond & Share Company's system be not unduly and unnecessarily complicated, and voting power unfairly and inequitably distributed among security holders of the holding company system. One of the questions necessarily is: Do these companies constitute an undue and unnecessary complication to the structure of Electric Bond & Share System.

The Examiner: What do you contend constitutes complication?

[161] Mr. Berman: What do we contend constitutes competition?

The Examiner: Yes.

Mr. Berman: We contend a number of things which we will explain in greater detail later, but bearing on this issue we wish to say that it is quite apparent to us that the expense to the security holders of these various companies, measured by the services that they perform for these

security holders, certainly has some bearing on whether they are undue or unnecessary complication. Now, the existence of any company over and above a certain number of other companies is obviously some sort of a complication, but that still does not deal with the problem of whether it is undue or unnecessary.

The Examiner: The meaning of "complication" is not defined in the statute, is it?

Mr. Berman: No, sir, except so far as is indicated in the statement of Policy of the Act contained in Section 1-C, and so far as I know there has been no holding on this point and it appears to us that certainly it must bear on the issue of undue and unnecessary complication for the Commission to have before it the evidence of what these companies do as measured by what these companies cost the security holders, and that would furnish some basis for the Commission to say, "These appear to us to be an undue and [*162*] probably an unnecessary complication," which I am not saying at this time is so, but I say that certainly these tabulations or exhibits are relevant on that issue.

The Examiner: Of course, complication is obviously a more or less general term and covers a lot of territory.

It may well be that a situation that will cause unnecessary expense might be construed by the Commission as one of the elements that would constitute a complicated situation. Inasmuch as that has not been decided, I think that I will have to take the evidence at the present time and overrule the objection.

[The documents referred to were thereupon received in evidence as Commission's Exhibits Nos. 62 to 66, inclusive.]

Direct Examination (resumed) by Mr. Berman.

Q. Mr. Flanagan, I show you a copy of a tabulation marked for identification as Commission's Exhibit 67.

Have you a copy of this tabulation before you? *A.* Yes, sir.

Q. Are you familiar with the contents of this exhibit, Mr. Flanagan? *A.* I am.

Q. Was it prepared under your supervision and direction in the same manner as those exhibits previously re-
[*163*] ceived? *A.* Yes, sir.

Q. And was the source of the information and figures set forth in this tabulation, that which is indicated at the bottom of the page? *A.* Yes, sir.

Q. And can you relate the stockholders' reports and the file numbers set forth therein to the exhibits in evidence in this proceeding? *A.* The annual report to stockholders for the year 1939 prepared by American Power & Light Company is the company's Exhibit F, Part One, contained in Docket 30-144, which is Commission's Exhibit 18 (a). The annual report for the year 1939 prepared by Electric Power & Light Company is Company's Exhibit F, Part Four, contained in Docket 30-143, which is Commission's Exhibit 25(a).

Q. And were all the figures set forth in this tabulation derived from those sources? *A.* No, sir; some of them were calculated.

Q. Before we go into the question of calculation, was not one of your sources the U5S filed by Electric Bond and Share Company? *A.* That is right. That is Commission's Exhibit 13.

Q. In evidence in this proceeding? [*164*] *A.* In evidence in this proceeding, yes, sir.

Q. Now, will you explain to us, Mr. Flanagan, just what computations you have made based upon figures derived from those statements and exhibits? *A.* The arrearages per share indicated in the first column, the total number of shares outstanding, and the total arrearages set down in

the last two columns of this statement, are taken from the annual reports of American Power & Light Company and Electric Power & Light Corporation, which were just identified. The number of shares of preferred stock of these two companies headed by Electric Bond & Share Company, were taken from Item 9 of Commission's Exhibit 13. The calculations are contained in the arrearages set down as applicable to those shares held by the public, and to those shares held by Electric Bond and Share Company. The calculation consisted of subtracting from the total number of shares outstanding those held by Electric Bond & Share Company, to arrive at the number of shares held by the public, and applying to each of these figures the arrearages per share indicated in the first column of this statement.

Q. And that shows that on the securities held by the public, arrearages amounting to $72,519,039.80 exist, that being the figure on the right hand? [*165*] *A.* No, that figure applies to the total shares outstanding, including those held by the public and by Electric Bond and Share Company.

Q. But the arrearages on the shares held by Electric Bond and Share Company amount to $1,624,317? *A.* That is right.

Q. And on those held by the public they amount to $70,894,722.71? *A.* Yes, sir.

Q. Making the total arrearage of $72,519,039.80 which I previously stated? *A.* That is right.

Mr. Berman: I ask that this exhibit be received, Mr. Examiner.

The Examiner: Cross examine.

Cross Examination by Mr. MacLane.

Q. The arrearages on the stock held by Bond & Share are at the same rate per share as the arrearages to the public per share on the same classes of shares? *A.* Yes, sir.

Mr. MacLane: The general objection to the exhibit as irrelevant and immaterial to any issue in the case.

The Examiner: Overruled.

[*166*] [The document referred to was thereupon received in evidence as Commission's Exhibit No. 67.]

Mr. Berman: Mr. Examiner, I understand that that concludes the introduction of the documents marked for identification at yesterday's session and, therefore, I ask that Mr. Flanagan be excused.

The Examiner: Very well.

[Witness excused.]

Mr. Berman: I understand, Mr. Examiner, that this Docket 37-31-1 was not present in the room yesterday when the other dockets which were part of this exhibit were introduced, and I ask to have it received at this time.

The Examiner: Very well; it is so received.

[The document referred to was thereupon received in evidence as Commission's Exhibit No. 38-K.]

Mr. Berman: Due to the fact that we wish to discuss with counsel for the respondents the question of a stipulation of facts, I suggest that you permit us to recess now for the lunch hour in order that we may have lunch and have this discussion as well.

The Examiner: We will recess at this time until 2 o'clock. All interested parties will return at that time.

[Whereupon, at 12:15 o'clock P.M., a recess was taken until 2 o'clock P.M., of the same day.]

[*167*] AFTER RECESS

[The hearing was resumed at 2:40 o'clock P.M., pursuant to recess.]

The Examiner: Are you ready to proceed, gentlemen?

Mr. Berman: We are, Mr. Examiner.

The Examiner: Very well.

Mr. Berman: Mr. Examiner, the parties, that is coun-

sel for the Securities and Exchange Commission and counsel for the respondents in this proceedings have agreed upon a stipulation which we would like to have read into the record if we may.

The Examiner: Very well.

Mr. Berman: It reads as follows:

"For the purposes of this proceeding only, and without prejudice to any other proceeding before this Commission or elsewhere, the facts stipulated to in the stipulation of facts the exhibits annexed thereto, entered into between the Securities and Exchange Commission and the present respondents, among others, and filed in the United States District Court for the Southern District of New York in the case of Securities and Exchange Commission, Plaintiff, versus Electric Bond and Share Company, et al, defendants, in Equity No. E81-378, shall be taken prima facie as facts existing as of the date of said prior stipulation, viz., June 30, 1936, with like force and effect as though [168] presented by competent witnesses and received in evidence in this proceeding. The aforesaid stipulation of facts shall not be physically attached to or copied into the transcript of the record of the present proceeding, but it shall be deemed incorporated into the record of this proceeding, and shall be given exhibit numbers as follows:"

The Examiner: Incorporated by reference?

Mr. Berman: By reference.

"Volume II to bear Commission's Exhibit 68-A.
Volume III, Commission's Exhibit 68-B.
Volume IV, Commission's Exhibit 68-C.
Volume V, Commission's Exhibit 68-D.
Volume VI, Commission's Exhibit 68-E.
Volume VII, Commission's Exhibit 68-F.

"Neither counsel for the Securities and Exchange Commission nor counsel for the respondents by entering into this stipulation shall be deemed to have conceded the relevancy or materiality of any facts contained in the aforesaid stipulation; the right to object at any appropriate time to the relevance or materiality of any statements therein contained being expressly reserved by both sides.

"Neither counsel for the Securities and Exchange Commission nor counsel for the respondents shall be foreclosed from offering evidence which is material and relevant and which seeks to amplify, modify, contradict or cor- [*169*] roborate statements contained in the aforesaid stipulation of facts and related exhibits, but any such evidence shall not prevail unless it overcomes the prima facie case established by the stipulation.

"In the event of any appeal from any order of the Commission in connection with the present proceeding, or any court proceeding of any kind in connection therewith, there may be omitted from the record such portions of the aforesaid stipulation (Commission's Exhibits 68-A to F inclusive) as may be determined by the parties to be immaterial; in the event of their disagreement, the determination to be made by the Trial Examiner in the present proceeding, subject to the right of either party to print at its own expense any rejected portions, which shall be joined to the record as an offer of proof on the part of the party submitting it."

The Examiner: Do you agree to that?

Mr. MacLane: We agree to that stipulation. I stated to counsel when I expressed my agreement that at the close of the Commission's case, as I understood it, and as I have

said heretofore, I expect to make some motion for definition of issues. I don't intend to state the exact form of the motion at this time, and by entering into this stipulation I want to be sure the record discloses I don't waive my right to such motion.

The Examiner: I started to say there is only one [*170*] thing that strikes me as anomalous in the content of the stipulation and that is that there is a reservation to object to immateriality or irrelevancy of all the material which is deemed to indicate that you are offering something which neither side considers material. It puts me in the position of accepting evidence without any basis of materiality.

Mr. Berman: Mr. Examiner, that doesn't seem to me to be an insuperable difficulty. I think both sides feel it is in general background material and therefore that this stipulation is material, but that doesn't mean every single part of it and every single document in it is material.

The Examiner: Maybe you do contend certain portions are material?

Mr. Berman: We would not have it entered in the record if we didn't feel it had some materiality or relevancy in this proceeding. I think we all agree it does. What portions are immaterial we reserve the right to raise the objection as we go along.

The Examiner: I think that clarifies the situation. All right, proceed.

Mr. Berman: Let the record show, Mr. Examiner, that counsel for the Commission likewise stipulates. I offer as Commission's Exhibit No. 69 and ask that it be received subject to the reservations as to materiality and [*171*] relevancy, and that it be incorporated by reference in the record and not physically the pleadings of the parties in the case of the Securities and Exchange Commission, Plaintiff, against Electric Bond and Share Company, et al, Defendants, for the limited purpose of establishing admis-

sions of the respondents in this case with respect to the material issues in this case, and no doubt for such admissions as the respondents may find are established by the pleadings of the Securities and Exchange Commission in that proceeding subject, as I have said, to the right of either party to object to the materiality of any portion of this document.

The Examiner: Is that agreeable.

Mr. MacLane: Why I think so, assuming we have a full and complete right of objecting on the grounds of immateriality. I don't want to object on the grounds of lack of identification, that it is a copy and not the original, or any technical ground, and I admit the principle if there is an admission against interest in a judicial pleading it has a strong effect and is almost insuperable. Offhand I don't know what is in the pleadings that is immaterial but rather than interrupt the proceedings, I will reserve my objection on the ground of immateriality.

Mr. Berman: May I say also subject to the agreement already made, such parts in the event of court procedure of [172] any kind that the parties may agree are immaterial will be omitted, with the reservation either party may have printed at his own expense the rejected portions.

The Examiner: The same manner as in the previous stipulation?

Mr. Berman: Yes.

The Examiner: Very well, that will be Commission's Exhibit 69.

[The document referred to was marked Commission's Exhibit No. 69 and received in evidence.]

Mr. Berman: I should like to state, Mr. Examiner, that Mr. Samuel W. Murphy of the Electric Bond and Share Company has agreed to furnish us with certain information relating to a breakdown of the personnel presently employed by the respondents in this proceeding, and I ask

that an exhibit number be reserved for the receipt of this information when it is obtained from Mr. Murphy.

The Examiner: That will be Exhibit No. 70?

Mr. Berman: Yes.

The Examiner: The record will so show.

[Commission's Exhibit No. 70 was reserved for the document referred to, same to be furnished later.]

Mr. Berman: That is all we have to submit in the form of documentary proof at the present time, Mr. Examiner, but [*173*] I should like to say that the respondents are to file a supplement to the U5B statement now in evidence on July 1st, according to the rules of the Commission, and that will contain information bearing upon the information now in that U5B statement, and we should like to have the right to introduce that supplement when received and any other material received which bears upon the material now in evidence at a later date.

The Examiner: I assume there will be no objection to that?

Mr. MacLane: No objection.

Mr. Berman: We should like to make a statement at this time, Mr. Examiner, and we make the following statement in order that counsel for the respondents shall be apprised of the contentions of Commission counsel and of the issues in this proceeding as counsel for the Commission see them. It is the position of counsel to the Commission that the data heretofore placed in the record establishes that the continued existence of American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company unduly and unnecessarily complicate the structure and unfairly and inequitably distribute voting power among security holders of the holding company system, the Electric Bond and Share Company. In the first place, it appears that there are superimposed upon each operating company in the holding company [*174*]

system at least two holding companies and a service company. Whatever value or benefit one may ascribe to membership in a holding company system and centralized servicing arrangement, as to which we make no concession, it appears clearly that in the Electric Bond and Share system the holding company functions are centered in Electric Bond and Share Company itself and Ebasco Services, Incorporated, its wholly owned subsidiary, and that the three subholding companies perform no indispensable functions nor even any important functions except the strictly corporate functions necessitated by their own existence. Reference is made to the Ebasco records, Commission's Exhibit 38; Carolina transcript, Exhibit 44, Kansas Gas and Light Company transcript, Exhibit 41; Pennsylvania Power and Light transcript, Exhibit 39; the answer of the respondents in the court case in evidence as Commission's Exhibit 69; Exhibit 45 of the stipulation of facts in evidence as Commission's Exhibit 68; Exhibit 39; the personnel and expense charge of the subholding companies Exhibits 62 to 66 and other data to be filed for which exhibit No. 70 has been reserved, all of which show in the opinion of counsel that these subholding companies are not equipped to and do not render valuable or important services. The only important exception which has been claimed in the past by the chief officials of the system so far as [*175*] the exhibits in evidence show is that the subholding companies provide equity money and it has been admitted that this might have been done by Electric Bond and Share Company itself. Reference is made to Exhibit 45 of the stipulation of facts in evidence as Commission's Exhibit 68. In any event it will be seen that this has resulted in a distribution of voting power which is obnoxious to the standards of Section 11.

The Examiner: What is the result specifically?

Mr. Berman: That the existence of these companies,

these subholding companies has resulted in a distribution of voting power which is obnoxious to the standards of Section 11.

The Examiner: Would you say the mere existence—

Mr. Berman: (interposing) May I elaborate on my statement, please, Mr. Examiner?

The Examiner: Proceed.

Mr. Berman: Among other detrimental results of maintaining these unnecessary companies the record shows that their continued existence results in unnecessary expense of a substantial amount. Thus it appears that the three subholding companies have annual payroll expenses of $230,461; taxes of $530,172 and total annual expenses of $1,102,225 exclusive of expenses for servicing their own [176] securities. Reference is made to Exhibits 63 to 65.

Secondly, the existence of the three subholding companies constitutes a means of unfairly and inequitably distributing voting power in the holding company system. The record establishes that some $2,100,000,000 of consolidated assets of the three subholding company systems are controlled by Electric Bond and Share Company through total investments in securities chiefly in voting securities of the three subholding companies which are carried on the books of the Electric Bond and Share Company at a value of some $120,000,000 or a ratio of approximately 17.50 to 1. Reference is made to Exhibit 55.

This is made possible by a pyramiding structure which centers about the three subholding companies. These companies have combined capitalization totaling approximately $592,000,000 (see Exhibits 52, 53 and 54), of which approximately $108,000,000 of less than 18 per cent is held by Electric Bond and Share Company and is carried on its books as stated above at approximately $120,000,000. The $592,000,000 of combined capitalization of the three subholding companies compares with about $620,000,000 com-

bined corporate assets of these three companies. Reference is made to Exhibits 18-A, 25-A and 52-A.

Such assets include $563,000,000 carrying value of [177] investments of these three subholding companies in their subsidiaries, chiefly in voting stock, but also to some extent in senior securities.

These investments have a book value on the books of the issuing companies of about $538,000,000 as compared with $1,059,000,000 of publicly held securities of these companies. In addition Electric Bond and Share's investment in these companies, that is in its indirect subsidiaries, amounts to $67,000,000 on the books of the issuers, these investments being chiefly in bonds and notes. This amount includes $28,925,000 which is not included in the capitalization of the issuing company, but is carried in current liabilities. The result of this is that Electric Bond and Share Company holds $104,000,000 plus $38,000,000, or a total of $142,000,000 of capital securities of the three subholding companies and their subsidiaries as compared with $1,543,000,000 the investment held by the public. As stated previously the total of the consolidated assets of the three subholding companies systems controlled by Electric Bond and Share Company and as shown on their books is about $2,100,000,000.

The foregoing investment figures represent ledger values on the books of the owning companies and the fore- [178] going capitalization figures represent book values on the books of the issuing companies. The investment figures do not purport to represent present market values. In general they purport to represent the cost to the owning company in cash or in value of securities exchanged for securities acquired, but the figure of $120,000,000 which represented the ledger value of Electric Bond and Share Company's investment in the three domestic subholding companies, also includes $6,230,341 of net appreciation on the books

of Electric Bond and Share Company. Reference is made to Exhibit 43 of the stipulation of facts in evidence as Commission's Exhibit No. 68, and there are further items of appreciation reflected in ledger values of investments in the subholding companies. In citing these book figures as they appear in the published and filed financial statements, counsel to the Commission expressly refuses to admit that the value of the parties' equity represented by the securities is equivalent to the book figures on the books of either the issuing company or the owning company. In this connection the record shows, Exhibit 67, that at the end of 1939 cumulative preferred dividends in arrears on publicly held stock amounted to $30,649,067 in the case of American Power and Light Company, and $40,245,656 in the [*179*] case of Electric Power and Light Corporation. The record also shows substantial arrears on the preferred dividend requirements of various indirect subsidiary companies of Electric Bond and Share Company as established by the exhibits in evidence. It also appears that the preferred stock, even those having substantial arrears carry either no voting rights or the voting right of one vote per share which results in a substantially smaller total vote per class than that of the common stock.

Accordingly, I repeat it is the contention of counsel for the Commission that the holding company system of Electric Bond and Share Company is unduly and unnecessarily complicated and voting power unfairly and inequitably distributed among the security holders of the holding company system as the direct and proximate result of the continued existence of American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company, and that in order to remedy these conditions in accordance with the mandate of Section 11(b)(2) of the Public Utility Holding Company Act of 1935, and in order to comply with the explicit policy of the act

as cited in Section 1-C thereof, it is necessary to discontinue the existence of American Power and Light Company, Electric Power and Light Corporation and National Power and Light Company.

[*180*] The foregoing references which have been made in the course of this statement are merely some of the principal portions of the record. The statement of counsel's contention will be amplified by the proposed findings of fact with fully detailed references to the entire record.

The Examiner: It seems that you have made a clear statement. Have you any comment, Mr. MacLane?

Mr. MacLane: If the Examiner please, in order to formally present this matter, it seems to me that on the state of the record as it stands here at this time that we are entitled to move, and do move either (a) for a dismissal of these proceedings on the ground that no evidence has been offered to support the allegations of the notice and order, or (b) for a definition of the issues which we are required to meet accompanied by a reference to the specific parts of this voluminous record that has been presented here to the Examiner, and which in its present state consists, as you yourself I believe have commented in the course of the hearing, a cumbersome and voluminous record without much guide to us in presenting our case. I call your attention and I do not propose to argue the merits of the case in any sense at this time, but I call your attention to the fact that we have been served by the Commission with a notice and order for hearing in which it is stated on a somewhat summary statement of facts that the Commission has reason to believe that the holding company [*181*] structure of this system is unduly and unnecessarily complicated and that second, voting power is unfairly and inequitably distributed. Now there are involved in this system under the allegations of the notice—I won't stop to attempt to count them definitely, but I will say approximately 40 principal

companies including these three holding companies, the top holding company so-called, the Bond and Share and the operating companies. There is no specification any place in this notice and order of the Commission as to where this complication exists or how or in what companies this voting power is inequitably distributed.

We come here to meet the issue thus tendered by this bill or by this notice and order which we may assume for present purposes at least is a sufficient notice to inaugurate an investigation by the Commission into this problem, but having come here and been here for two days we are furnished with a mere introduction by reference with the conceded right to object at the appropriate time to any particular parts of it, and with the frequently reiterated right through the hearings to ask what portions they are relying upon, and it seems to us that if we are to meet these issues which have been suggested here by counsel in his remarks we shall have to go into the question of the fixation and distribution of voting power, the reason for [*182*] the organization of, the reasons for the existence of each one of these companies and be prepared to meet every statement that may be contained in any of these exhibits without knowing which statement we must meet, how full our testimony must be, to what points it must be directed, or where we must begin and where we may in proper protection of our client's interest properly stop.

This case has two aspects, first in the administrative investigation by this Commission in which I am perfectly to assume that the Commission by reference may examine every document that it has on file and may conclude from the facts stated in that document, and may put in evidence, if any, which is relevant to this determination and that a very wide latitude would be given to this Commission in so doing, but at the same time if this matter stopped with an investigation before the Commission and a determina-

tion by it, and I hope it may stop, I am not here in a controversial spirit, but at the same time, it must be recognized that this is the most vital form of procedure which can be directed against these companies, that it is of the highest moment, the highest importance to a great many investors and to capital representing a very large amount of money.

Counsel says these companies must be eliminated. He proposes an application of what has been called in the utility industry of a "death sentence" and which has been [*183*] referred to by some critics of the industry as a revivification of the industry, but without disputing which it may be, it is certain from counsel's statement that he proposes to liquidate or that the Commission shall liquidate these three holding companies.

The Examiner: I didn't get that last phrase you used, Judge.

Mr. MacLane: Counsel states that his proposal to the Commission shall be that these three holding companies, the National Power and Light Company, the American Power and Light and the Electric Power and Light shall be liquidated, that their existence shall be terminated and that they shall no longer be in being. Now I merely mention without arguing the merits of his proposal or its demerits, or commenting upon its difficulties under present conditions, simply as indicating the importance of the thing to these companies, and unless this matter may be worked out in some way with the Commission without the necessity of the application of the drastic order to these companies then, obviously, the companies must at some time seek redress in the courts and must seek in the course of this procedure, if they can not do it anywhere else, to create, protect and preserve a record upon which they may, if they are forced so to do, seek a court review.

[*184*] Now I submit to you in all candor that as this record stands here today we can not possibly procure an

adequate review or get a review of these proceedings. In other words, we have no record. We have agreed here that all this material which piles up before us may be a part of this record, subject to the right of either side to object to the materiality and relevancy of any of it at the appropriate time. Well, when is the appropriate time? Certainly the appropriate time must be during the presentation by the Commission of its case. Now I hand it to counsel for having made a very able opening statement of his position, but he has done no more than if we were having a proceeding before a court, so such a statement as made would be the one he would be expected to make and it was done very well and has served to clarify what he conceives to be the issues. To what extent his conception may be binding on the Commission I know not.

The Examiner: What, specifically would you suggest by way of amplification?

Mr. MacLane: I suggest that counsel should take this record and should identify those parts of it which are to be part of this proceeding which we should meet, and that we must have one of two rights here at this time, one must be to have the time to go through this record and our copies [*185*] of it, as we have them, and see what there is in it that we may properly object to and see what is in it that is relevant, see what is in it that we may be required to answer at great labor and expense, or else he should be required, and this it seems to me is proper procedure, to identify those portions of the record which he states supports the contention he makes so that we may (a) have a definite record here and (b) so that we may know what we are required to meet. Now otherwise I don't see how we can intelligently proceed. I don't know what my first step should be. I don't know what witness I should call first. I don't know to what I should direct his attention.

The Examiner: Now, have you about finished?

Mr. MacLane: Yes, I think so.

The Examiner: With regard to the first motion to dismiss, I don't think I have any authority to entertain such a motion.

Mr. MacLane: I understood that. I make it merely for the record.

The Examiner: For the record, I would have to deny it as far as my function here is concerned.

Mr. MacLane: I understand that thoroughly.

The Examiner: You are of course at liberty to make that motion before the Commission.

[*186*] Mr. MacLane: I make that formally for the record, that is all.

The Examiner: With reference to the second part of your motion and remarks, while I recognize the difficulty, it seems to me that in the trial of any issue of facts that the defense is usually patterned after the evidence adduced by the party having the burden of proof, and I think it is quite usual that ordinarily the issues at the outset are simply broadly defined through pleadings, in some cases by a bill of particulars. Now I think counsel's statement here seems to me to fulfill the function of the bill of particulars combined with the order. It seems to me it apprises the respondent of the general issues to be met and that the testimony to be hereafter adduced will show or indicate the specific questions which will need explanation or contradiction.

[*187*] And in regard to the voluminous record there are practical considerations both ways, as I indicated, I believe yesterday in the course of the hearing, but inasmuch as so far as I know there is nothing to prevent additional testimony to be adduced should either party require it, even after the matter has reached the stage of submission at specific findings or request for findings, it seems to me the practical solution of the matter is to go ahead on the

basis on which we have started, with the understanding, which I think counsel for the Commission has already indicated, that they are willing to submit requests for findings which will be based and will contain specific reference to any matter relied upon, and that counsel would be willing to be bound and confined to those matters. Is that correct?

Mr. Berman: That is correct, Mr. Examiner. May I add to what I have just said, Mr. Examiner, in this respect?

Judge MacLane has correctly stated that the Commission's order as it was originally served on the respondents did state the issues broadly in terms of the entire system of the respondents, and there may be, as he says, involved some forty companies, and there might be a great deal of work involved in the presentation or preparation of evidence with respect to these companies.

The Examiner: I just want to finish my statement. Inasmuch as counsel for the Commission has agreed to [*188*] be bound by the briefs and the specific requests for findings, and the references therein made to the record, it seems to me that ought to time it sufficiently so in the event of anything like surprise or anything of that sort, that a proper motion could be made for the taking of additional testimony which would be necessary. I am sure the Commission has no desire to foreclose the respondents from presenting any evidence that has any legitimate bearing upon the issues.

Mr. MacLane: It is my understanding that the findings would be tendered by counsel after the evidence is submitted. I don't know that I have made myself sufficiently clear here. I said that I did not propose to argue the merits at this time, but I simply wanted to call attention to the state of this record. Counsel has made some statements as to certain relationships which exists with respect to capitalization; he has made certain statements as to the con-

centration of voting rights; he has made certain statements as to resulting control within the meaning of this Act; and he has also made some statements as to expense. Now, I take it that on his theory of the case these statements of relationship indicate a good deal of suspicion or a ground of contention that these complications [*189*] or complexities, or whatever you may wish to call them, are undue and unnecessary, and that this distribution of voting control is not fair and is not equitable. But I am frank to say that I have not heard any word of testimony to that effect. I understood him to say that is what he would contend upon this voluminous record. Well, I don't know for the life of me what is in the record that throws much light on whether these complications are undue or unnecessary, or whether this voting control and its distribution are unfair and inequitable. That requires a wealth of research, as I see it. I did not propose to make an opening statement with respect to our case at this time, but it seems to me that that involves some consideration under circumstances surrounding the financing of these companies.

The Examiner: May I ask this question? Counsel for the Commission expects to introduce testimony bearing on that question, do you not?

Mr. Berman: Mr. Examiner, we made no commitments as to what we expect to introduce. We feel we have gone far enough with the case at the present time and now it will be the duty of the respondents to proceed to meet the burdens we have raised.

Mr. MacLane: Now, if I may offer an illustration—

[*190*] The Examiner: Just let me ask this one other question, if I may interrupt, please. Do I understand you to say, Mr. Berman, that the Commission does not expect to introduce any testimony to show the meanings or the manner or the method whereby these conditions have created the

inequalities and the unnecessary complications indicated in your statement?

Mr. Berman: May I be permitted to state the position of counsel at this time, Mr. Examiner, and I will take up where I left off before with the statement, that the original order issued by the Commission was in broad form and affected the respondents in many ways under the provisions of Section 11(b) (2), and counsel for the respondents raised the point about the enormity of the issues involved, the task of preparing adequately for a hearing on the broad scope of the issues herein contained, and in order to lighten that burden and in the interest of expedition, the Commission issued its order confining this proceeding initially to the one issue of whether the continued existence of these three sub-holding companies unduly and unnecessarily complicates the structure of the holding company system and unfairly and inequitably distributes voting powers among the security holders thereof. We feel that we have presented sufficient evidence so that that question may be answered in the affirmative.

[*191*] The Examiner: In other words, you feel you have made out a prima facie case?

Mr. Berman: We feel we have made out a case, and I don't wish to rest it on prima facie. It is not necessary to put a witness on the stand to state something. Documents talk, and sometimes a great deal more forcefully than witnesses, and we feel that the exhibits we have placed in evidence have established the affirmative of the proposition which, as we understand it, is to be initially considered at this hearing. Now, there has been a good deal said in the course of the hearing about how voluminous the record in this proceeding is, and how unfair it is to expect the respondents to meet the issues and to meet the substance of this enormous quantity of material introduced in evidence. It seems to me there is considerable misunderstanding in

that regard and I would like to point to it in this way. I think that there are two types of exhibits in this proceeding. The great bulk of the exhibits that were introduced in the earlier stages of our hearing, those which are termed the voluminous records, are what might be termed background or foundational material. That is, material as to which counsel for the Commission did not feel it necessary to present any affirmative case, which it was willing to assume and which it believes that respondents must [*192*] be willing to assume as underlying this case. We did not seek to establish, for example, the terms and articles of the respondents' charters, by-laws, indentures, the location of its properties as shown on maps, the copies of the information it has filed with State Commissions, and the Federal Power Commission. These are all things it has done and it has supplied us with this information, and all we have said is: "This is information you have supplied us with; this is information you have compiled; this is information of which you have copies in your files."

We feel it is fair the Commission should have this information before it as background material against which the main issue here can be projected. Now, the items I have just enumerated, charters, by-laws, indentures, maps, and copies of reports to the Federal Power Commission or State Commissions, together with financial data, those documents constitute the enormous pile of documents which you see before you, Mr. Examiner, and which has apparently impressed the respondents with the fact that they are voluminous and awesome, but they are documents they are acquainted with, which they furnished us, and which belong here as foundational material. So far as the second class of exhibits goes, those are exhibits which can probably be placed in the palm of [*193*] one hand, which we have placed in evidence, and which we claim clearly point the single issue involved at this stage of the proceeding, that

is, the issue of whether it is necessary to discontinue the existence of these three companies in order that the structure of Electric Bond and Share Company shall not be complicated, and voting power unfairly and inequitably distributed. We believe we have placed in evidence exhibits which clearly show that these three companies do unnecessarily and unduly complicate the structure of the holding company system in many ways, and we believe we have shown that they do unfairly and inequitably distribute voting power among the security holders thereof. We may be wrong, but it is for the Commission to say on the basis of the testimony, whether the respondents should have the right to—

The Examiner: Do I understand you to mean that the mere demonstration of the relative relationship is sufficient to rest upon?

Mr. Berman: I mean to say, Mr. Examiner, that the demonstration that the ownership of securities with a value of $120,000,000 on the books of the company which results in giving control to the owners of that $120,000,000 of a vast complex of holding and operating companies which have assets of $2,100,000,000, and which since they do place [*194*] the control in the hands of the owners of that $120,000,000, in effect disfranchises the holders of the other securities of that company, we maintain that certainly is definite evidence of an unfair and inequitable distribution of voting power among the security holders, and we say when it is considered in addition that there are arrearages on preferred stocks which have priority to the holdings of this original owner and the arrearages exceed $70,000,000, that is further evidence that the owners of this small block of stock, relatively speaking, should not have the right, or at least it is unfair and inequitable from the point of view of distribution of voting power, that they have the right to control these companies. And we have

pointed out that it is because of the existence of these sub-holding companies, and through these sub-holding companies, that that type of thing is possible, and we, therefore, say, "Since this is an unfair and inequitable distribution of voting powers, and since it is because of the continued existence of these three sub-holding companies that this is done, in order that voting power not be unfairly and inequitably distributed it is necessary to discontinue these three companies," and we turn to the other facet of the issue and say, "Since these companies as shown by the admissions in evidence to which we have ad- [*195*] verted in the statement of our position, since these sub-holding companies perform no important function except those relative to their own corporate existence, since they in effect cause expense to the security holders of the system, since they serve no useful function, and serve the noxious function of perpetuating these unfair and inequitable distributions of power, we feel that it is necessary that the existence of these companies be discontinued."

Judge MacLane has made the point that this is a very serious business, and I want to make it clear that counsel for the Commission does not in any sense underestimate the seriousness of the situation, but we feel at the same time that the basic philosophy of this Act and the basic philosophy of this action does not rest with us. Congress has passed an Act, and it is for the Commission to administer, and Congress has expressed its position and its purpose and has stated as the policy of this Act that holding companies shall be dissolved or their existence discontinued wherever possible. That is to be found in Section 1 (c). Congress has charged this Commission with the duty of making certain studies involving the corporate relations of these companies. We believe that the documents in evidence constitute the material source book of that study, and we believe that [*196*] the further exhibits we have

placed in evidence clearly present the proof of the issue before us. And further, we have stated that before the conclusion of this proceeding we shall present our proposed findings of fact, we shall state clearly the specific parts of the record upon which we have based them, and which we consider material.

Respondents will have a full opportunity to dispute their materiality, to argue against the force we assign to them, present other conclusions of fact, and point to other parts of this record, and then the matter will go to the Commission for its determination. We feel the respondents will have every opportunity to present every phase of the situation that they feel is important.

The Examiner: Off the record.

[Discussion off the record.]

Mr. Berman: I have said that with respect to the suggestion of the Trial Examiner that the respondents be afforded additional time after the submission of proposed findings properly referenced to the record by counsel for the Commission, that we do not feel we have the power to modify the Commission's rules with respect to the time allowed, but that we feel certain that an application by the respondents for additional time if it should be re- [197] quired in connection with these findings of fact, will receive sympathetic attention. I have also said—

The Examiner: You mean an application made to the Commission?

Mr. Berman: To the Commission. I have also said that we feel we have clearly apprised the respondents at this time of what the issues are in this proceeding, and that the respondents should not have any difficulty whatever in knowing how to go about meeting these issues which we have indicated to be evidence along the lines tending to indicate that the existence of these companies does not unduly or unnecessarily complicate the structure of the Hold-

ing Company System, evidence tending to prove that voting power is not unfairly or inequitably distributed among the security holders of this holding company system as a result of the existence of these sub-holding companies. If the respondents can meet those issues it seems to us they will have met the issues in this case, and they should have no difficulty in knowing how to proceed to do so.

Mr. MacLane: Now, Mr. Examiner, I don't want to take a lot of time, but I want to make my position here clear. Counsel has, as I see it, agreed with me that the notice and order which were served upon us did not apprise us of anything more than that the Commission was going to [198] investigate this question of the undue complication of this system, and the unfair distribution of voting power; that the notice and order did not say wherein or in what companies or how or in what way. There was a supplemental order that said they would consider at this time whether the continued existence of these three companies would have that result. Now, I stated that I thought counsel had made a very fair and a very full opening statement of his views, comparable to that which any competent lawyer would make at the opening of a hearing of his case, which had helped to define the issues which we were proposing to meet.

But I want to ask you if in all your experience as a lawyer you were ever required to offer evidence to meet issues on the day after they were tendered to you. Those issues have never been tendered to us and I had not the slightest idea what counsel was going to contend or what could be contended under this order until Mr. Berman made his very able statement. Now he says that the support for that very able statement he made is contained in his library, as I think Your Honor called it, which comprises seventy-odd numbered exhibits, with some of them having volumes running from A to S or T, and all I am saying to you here is

on the single procedural point, and that is one I think the courts have [*199*] been emphatic upon in recent years with the growing powers of administrative commissions, and that is that the parties brought before them must have a fair hearing and an opportunity to present their case.

I ask you in all fairness whether you ever heard of a lawyer being called on an important case and being confronted with this mass of material and told, "Answer this tomorrow morning." That proposition does not require any argument. He says after we put in our evidence and everything else he will tell us what part of the stuff is material. Do we save any time that way? Is there any advantage to orderly procedure and disposition of this case to have us get out our blunderbuss and bring it in here? And we can bring in a blunderbuss and try to meet everything there is, just as a blunderbuss has been thrust at us, and we can encumber this record with pages and pages and volumes and volumes of testimony to be sure we have met everything. At some time, counsel says, he has to prepare some findings. When? After the evidence is in. He has not suggested that we are going to have any time to put in evidence. He does not even suggest that we may know what his findings are before we are required to tender ours, or have this voluminous volume of stuff identified.

I say that any such procedure as that proposed lacks [*200*] every element of a fair hearing, every element of due process. Now, all I am asking him to do is to do some of the work now that he says he has got to do some time in the future, and let us know what we must meet.

He has not introduced a word of testimony which says that this voting power is unfairly distributed. He says from certain facts it may be concluded and we may look in there and we will find the facts. I assume there are other facts in there which show the considerations on which the stock was issued and the voting power distributed. I am not go-

ing to argue the merits of this thing. I am not going to suggest at this time what our defense will be, but I am suggesting and I do urge that in the interest of orderly procedure and in the interest of due process, that we be told before we put in our testimony what we have got to meet, and not be required to wade through all that material to pick out what we think he may rely on and perhaps not be able to do that, and finally, when we are tendered with findings, we will know what he proposes to rely on. That simply is not a square deal or fair play, just between man and man.

The Examiner: Of course, I will have to take the matter under advisement. But I would like to say this. [*201*] Of course, I have had no opportunity to study the exhibits that have been introduced in evidence, but in the absence of some legislative mandate or some definition that you could rely on, it does not seem to me that a case has been made out by the Commission at this stage of the proceeding. I may be entirely wrong about that.

Mr. Berman: Mr. Examiner, counsel for the Commission think you are, and counsel for the Commission feel that they would like to know from Judge MacLane whether the statements he has made recently are to be construed as a motion to be addressed to the Commission with respect to the various questions he has raised, and if he wants them so construed, are they in the form he thinks is suitable, or does he wish to revise them so they may properly be heard before the Commission.

Mr. MacLane: I don't know what the rules of the Commission are in that respect. I had assumed that the Examiner had power to determine the order of procedure, and I supposed he was competent to make a ruling upon a question of this kind. I don't know whether we have a right to review that ruling before the Commission or whether we should ask for it.

Mr. Berman: I have here the rules of the Commission which I would like to read as far as applicable to the question before us.

[*202*] Rule 6 is entitled "Motions," and states as follows: [reading]

"Motions in any proceeding before a trial examiner which relate to the introduction or striking of evidence, or motions before a trial examiner in any proceeding pursuant to Section 8 of the Securities Act of 1933 as amended,"—that is not here applicable—

"may be ruled on by the trial examiner. All other motions shall be ruled on by the Commission.

"Motions or similar pleadings calling for determination by the Commission shall be filed with the Secretary or other duly designated officers of the Commission in writing, provided that motions or similar pleadings calling for determination by the Commission but made in the course of a hearing, may be filed with the trial examiner in writing, who shall refer such motion to the Commission. Any such motion or similar pleading shall be accompanied by a written brief of the points and authorities relied upon in support of the same. Any party or counsel to the Commission may file a reply brief within 5 days after service upon him of such motion or other pleading as provided in Rule XIV, unless otherwise ordered by the Commission. Motions and similar pleadings will be considered on the briefs filed following the time for filing the reply brief, unless otherwise ordered by the Commission. No oral argument will be [*203*] heard on such matters unless the Commission so directs."

I think this rule clearly indicates the procedure which must be followed.

Mr. MacLane: I suppose under the rule—I am frank to

say that my clients here should probably have someone more familiar with the rules of practice of the Commission than I—but I assume from your reading that this is a motion which in the first instance is properly addressed to the Trial Examiner. It seems to me it is one which is necessarily involved in the order of procedure adopted here. Suppose I had said at the outset, "I can't admit all of this evidence in this form. I have got to be apprised as to what is in it. It will have to be identified and I will have to have an opportunity to inspect it." In any orderly procedure haven't I the right to expect it and haven't I the right to know what is in it? I am not bound because my client prepared the exhibit. I am entitled to look at those exhibits. I could have sat here for days looking through the exhibits, volume by volume, to see what was involved before I stated the motion or agreed to their admission, and I waived all that before by stating that at an appropriate time I could object to the introduction of any part of it or could advise myself as to whether I should meet it.

[*204*] When is the appropriate time? It is during the presentation of the affirmative case. I have not had that opportunity. Now, I am asking for that opportunity and that is all I am asking for.

Mr. Berman: Do you wish to put this in the form of a motion? It seems to me if we are to arrive somewhere, and I take it you are as anxious as we are to reach a determination on this point—that we should follow the procedure established by the Commission and, if you agree that that clearly indicates—

Mr. MacLane: That I should write a motion and a brief?

Mr. Berman: A motion supported by a brief, and if you desire oral argument you have a right to apply for it and you will present the matter to the Commission, who will have an opportunity to reply, and the Commission will rule.

The Examiner: I take it that the Commission has practically rested their part of the case?

Mr. Berman: At this time we have. We feel that we have gone forward as far as we are required to go at this time.

Mr. MacLane: I am willing to follow any procedure to have this matter disposed of. If it is a matter within the province of the Examiner I will tender the motion in such form as the Examiner says I should.

[*205*] The Examiner: I have already indicated that I have no desire or intention—the remarks I have made have been more in the form of a suggestion than anything else—and I have no desire or intention or authority to require the Commission's counsel to follow any particular method of procedure. Now, they have submitted certain evidence. If they see fit to rest on that evidence that discharges that angle of it. If you want to make a motion, any motion that you may make along the lines you suggest, I think will have to be made directly to the Commission.

Mr. MacLane: If I prepare a formal motion and a short brief in support of it, I would like to call attention to some parts of this record. How much time would you be willing to agree, Mr. Berman, that I should have to prepare such a motion and brief, and you to reply to it? In other words, when do you want to present it to the Commission or the Examiner, whichever is appropriate?

Mr. Berman: It seems to me from listening to the argument you made before, that you expressed very forcefully the objections you had to the procedure, and what you felt was wrong with it, and I take it that it should not take very long to embody that in the form of a written motion which would be supported by arguments of the kind you [*206*] made and similar arguments which may occur to you. How much time do you feel you want to prepare such a motion?

Mr. MacLane: Suppose I prepare such a motion and brief and have it in your hands by Saturday morning, and you could reply to it by the following Tuesday and we can argue it before whatever competent tribunal is necessary.

Mr. Berman: That will be satisfactory to counsel for the Commission.

Mr. MacLane: The Commission will fix the time for argument?

Mr. Berman: If you wish oral argument it must be expressly requested. I will supply you with a copy of the Commission's rules.

The Examiner: I believe that the motion should be filed with me, and I will refer it to the Commission.

Mr. MacLane: I will serve it on the other side and, suppose, Mr. Berman, I send you all copies and you do the filing for me? Will you do that?

Mr. Berman: I will be very glad to, Judge. Of course, I should say that as I read the rules, I can't promise there will be oral argument. It states there will be no oral argument unless the Commission so directs, but [*207*] if you wish oral argument that should be stated in the motion.

The Examiner: Off the record.

[Discussion off the record.]

The Examiner: The hearing is adjourned subject to call on three working days' notice.

[Whereupon, at 4:05 o'clock P.M., the hearing in the above-entitled matter was adjourned, subject to the call of the Trial Examiner.]

* * * * * * [264]

Hearing Room 1102,
Securities and Exchange Commission Bldg.,
Washington, D. C., Monday, August 12, 1940.

Met, pursuant to notice of the Commission, at 10 o'clock, A.M.

Before: ROBERT P. REEDER, *Examiner.*

Appearances:

ALFRED BERMAN, Esq.,
MILTON H. COHEN, Esq.,
for the Securities and Exchange Commission.
SIMPSON, THACHER & BARTLETT, by JOHN F. MACLANE, 120 Broadway, New York City, and
REID & PRIEST, by FRANK A. REID, 2 Rector Street, New York City,
appearing for the Respondents.

[265] The Examiner: The hearing will come to order.

Mr. Berman: Mr. Examiner, on June 19, 1940, Mr. James G. Ewell, the trial examiner presiding at that hearing, granted an adjournment subject to his call for the purpose of permitting the respondents to lay before the Commission a motion directed to the evidence presented in the course of the proceeding by attorneys in the Public Utility Division of the Commission. The intervening time has been occupied with the making of this motion and its disposal before the Commission. At this time, if it pleases you, Mr. Examiner, I wish to offer an order of the Commission dated August 5, 1940, designating Robert P. Reeder as the officer of the Commission to preside at this hearing in the place and instead of and with the same powers and duties as the trial examiner heretofore designated to preside at said hearing. I ask that order be received in evidence and marked Commission's Exhibit No. 71.

Mr. MacLane: No objection.

The Examiner: Admitted.

[Commission's Exhibit No. 71 was received in evidence.]

Mr. Berman: I wish to offer at this time, Mr. Examiner, a copy of a letter sent to the counsel for the respondents on August 5, 1940, by Francis P. Brassor, Secretary of the [*266*] Commission, notifying counsel that the hearing would be reconvened this morning and that Robert P. Reeder had been substituted as trial examiner for James G. Ewell, and enclosing a copy of Commission's order to such effect. Will counsel concede receipt of such letter?

Mr. MacLane: Yes.

Mr. Berman: And may a copy be used instead of the original, which is in your possession?

Mr. MacLane: Yes.

Mr. Berman: I offer that as Exhibit 72.

The Examiner: Admitted.

[Commission's Exhibit No. 72 was received in evidence.]

Mr. Berman: In the course of the hearings held on June 18 and 19, Mr. Examiner, exhibit numbers were reserved at the request of Commission counsel for certain material which had not yet been received by Commission counsel, although requested from respondents, and it was agreed that Commission counsel could introduce that material when received. I now offer in evidence, and ask to have marked as Commission's Exhibit 49, that being the number reserved in the record for this material, the material furnished by the Electric Bond & Share Company to Commission counsel at their request, showing the number of shares of the various classes of stock and the percentage represented by proxy and other than by proxy at each of the meetings of the stockholders of [*267*] Electric Bond & Share Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light

Company, American and Foreign Power Company, Inc., and Ebasco Services, Incorporated, for the years 1935 through 1939. Attached to such material is a letter from Samuel W. Murphy of the Electric Bond & Share Company, transmitting it. I ask that these two papers be received as a single exhibit, and marked as Exhibit 49.

Mr. MacLane: We, of course, have no objection to the authenticity of this information and I assume that it is relevant to Commission counsel's theory of this case. Without conceding our agreement with his theory of this case, we have no objection to its receipt in evidence.

The Examiner: Admitted.

[Commission's Exhibit No. 49 was received in evidence.]

Mr. Berman: In the course of the hearings, Exhibit No. 70 was reserved for information which was being awaited from Electric Bond & Share Company with respect to a breakdown of the personnel of Electric Bond & Share Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, as of June 19, 1940. That information has been supplied to us by Mr. Murphy of the Electric Bond & Share Company. It comprises four sheets. We ask that it be received as a single exhibit, and marked as Exhibit No. 70.

Mr. MacLane: I have the same statement to make that I [268] made to the preceding exhibit. We admit its authenticity. We do not agree with any conclusions that may be sought to be drawn from it.

The Examiner: Admitted.

[Commission's Exhibit No. 70 was received in evidence.]

Mr. Berman: Mr. Examiner, at this time I will ask that there be received in evidence and marked as Commission's Exhibit 73, a copy of a statement by Commission counsel with respect to exhibits introduced at the hearings held on

June 18 and 19, 1940. It was duly served upon counsel for the respondents and it is part of the record, but I would like to have it incorporated formally under an exhibit number.

Mr. MacLane: No objection.

The Examiner: Admitted.

[Commission's Exhibit No. 73 was received in evidence.]

Mr. Berman: I would like to offer at this time the opinion of the Securities and Exchange Commission, and the order of the Securities and Exchange Commission with respect to the motion made by counsel for the respondents, and filed with the Commission subsequent to the hearings held on June 18 and 19. The Commission's order is dated July 30, 1940. I would like to have it received in evidence as Commission's Exhibit 74.

Mr. MacLane: Does that include both the order and opinion?

[269] Mr. Berman: Yes, the opinion of the Commission and the order.

Mr. MacLane: No objection.

The Examiner: They may be admitted as one exhibit.

[Commission's Exhibit No. 74 was received in evidence.]

Mr. Berman: Mr. Examiner, in the course of the hearings, before adjournment, Commission counsel stated that they were expecting a filing of certain special supplements to the U-5B statements by the respondents and asked to have a reservation made when the material was received and could be admitted. This material has now been received and we would like to start by having these various U-5B supplements received in evidence. The first supplement is that of the special supplement to the U-15B statement of American Power & Light Company, and we would like to ask that it be given Commission's Exhibit No. 16-0,

the original U-5B statement having been given the number 16-A to N, inclusive, and for the purpose of orderly progression, we would like this to receive the next letter number.

The Examiner: All right.

Mr. Berman: These were stamped "Received" by the file room of the Commission as of June 29, 1940. Do you want to take a glance at it, Judge?

Mr. MacLane: I would suggest that these be received [270] subject to the general stipulation and reservations made at the outset of this hearing; otherwise, I would have to take some time to examine them. If counsel is willing to continue that reservation as to these particular exhibits, I will not interrupt the proceedings at this time.

Mr. Berman: I have no objection to continuing the reservation as to these exhibits, except that I want to make it clear that counsel for the Commission not only does concede the relevancy but actually affirms the relevancy of this material.

The Examiner: Admitted.

[Commission's Exhibit No. 16-O was received in evidence.]

Mr. Berman: I ask that there be received and marked as Commission's Exhibit 23-N, the supplement to the U-5B statement of Electric Power & Light Corporation stamped "Received" as of August 1, 1940, subject to the same conditions.

Mr. MacLane: Subject to the general reservation at the outset of the hearing as to my right to introduce specific objections later, I have no objection.

The Examiner: Admitted.

[Commission's Exhibit No. 23-N was received in evidence.]

Mr. Berman: I ask that there be received and marked as Commission's Exhibit 30-J, the supplement to the U-5B

statement of National Power & Light Company, stamped "Received" August 1, 1940.

[271] The Examiner: The same reservation?

Mr. MacLane: No objection, subject to the same reservation.

The Examiner: Admitted.

[Commission's Exhibit No. 30-J was received in evidence.]

Mr. Berman: May I state, Mr. Examiner, that each of these dockets is preceded by an index which states its contents and in each case the contents are divided into four items, numbers (b), (c), (d), and (e), respectively: (b) setting forth certain information with respect to revaluation statements; (c) being a transcript of open accounts payable; (d) setting forth information as to the depreciation or retirement reserve account, the depreciation policies of the system and the amount of depreciation allowed or claimed for Federal income taxes; (e) setting forth the consideration for securities issued or sold. Now counsel for the Commission would like to advise respondents that they rely specifically on item (e) of Exhibit D of each of the three dockets just admitted, which shows the consideration for securities issued since date of inception by the sub-holding company respondents and subsidiaries thereof as of December 31, 1938. This material is to be used to supplement the statement served upon respondents marked Exhibit 73 in the following particulars:

[272] On page 15 of said statement, there should be added an item 2(a) immediately following item 2 on page 15 of said statement. Item (2)a will state Exhibits 16-O, 23-N, and 30-J. That will be the caption of item 2(a), and then there will be stated that these exhibits include form U-5B special supplement of American, Electric, and National, respectively, Item (e) of Exhibit D shows consideration for securities issued or sold since date of inception by

the sub-holding company respondent and subsidiaries thereof as of December 31, 1938. The same statement will appear on page 20 of the statement as item 3 (a), on page 22 as item 5(a), and on page 24 as item 4(a). The effect of these additions to our statement is merely to permit us to rely on this additional and supplemental material in the same way that we relied upon the early material furnished us by the respondents, and for the same purposes. I believe counsel for the respondents will find that some of the information contained in these items clears up questions he had raised during the hearing as to the consideration received and as to write-downs and break-ups of securities, questions which had arisen in the course of the last hearing.

At this time, Mr. Examiner, I would like to have admitted in evidence and marked as Commission's Exhibits 18-G and 18-H, [*273*] certain material filed with the Commission by American Power & Light Company as a supplement to its U-5S report for 1939, which contains additional reports for 1939 to stockholders and State commissions and regulatory bodies, and additional contracts. The material consists of two volumes bearing Commission's Docket Numbers 30-144-2-7 and 30-144-2-8. This material is being included and is being relied upon by Commission counsel in the same way as the same material for earlier years which had been furnished by the respondents or stated by the Commission counsel to be relied upon, and is intended merely to bring this information up to a later date.

The Examiner: It may be admitted subject to the same reservation on behalf of the respondents.

[Commission's Exhibits 18-G and 18-H were received in evidence.]

Mr. Berman: I ask that there be received and marked as Commission's Exhibit 24-F supplementary material filed by Electric Power & Light Corporation for the year 1938,

containing an additional report for 1938 to state commissions, bearing Commission's Docket No. 30-143-2-6, stamped "Received" by the Commission August 1, 1940.

Mr. MacLane: Subject to the same reservations, I have no objection to the document being admitted.

The Examiner: Admitted.

[Commission's Exhibit No. 24-F was received in evidence.]

[*274*] Mr. Berman: Commission counsel state that they rely upon this material for the same purposes as reports to State commissions were relied upon in the statement previously furnished to counsel for the respondents. We ask that there be received as Commission's Exhibit 25-G an additional report filed with the Commission by Electric Power & Light Corporation in connection with its U-5S statement for 1939, this material containing additional reports to State commissions filed by Electric Power & Light Corporation during that year. This material is relied upon for the same purposes as reports filed with State commissions were stated to be relied upon in the statement previously supplied to counsel for the respondents.

Mr. MacLane: No objection to its being offered at this time, subject to the same conditions as heretofore stated.

The Examiner: Admitted.

[Commission's Exhibit No. 25-G was received in evidence.]

Mr. Berman: Mr. Examiner, at this time we would like to suggest or request that a recess be granted in order that counsel for the Commission may confer with counsel for the respondents with respect to matters which are germane to the proceeding, and in order that adequate time be allowed we suggest that an adjournment be taken until 2:30, to allow for lunch and conference.

The Examiner: We will recess until 2:30.

[*275*] [Whereupon, at 11:15 oclock A.M., a recess was taken until 2:30 o'clock P.M., of the same day.]

* * * * * * [292]

Hearing Room 1102, A
Securities and Exchange Commission Bldg.,
Washington, D. C., Monday, September 9, 1940.

Met, pursuant to adjournment, at 10'oclock A.M.

Before: ROBERT P. REEDER, Trial Examiner.

Appearances:

ALFRED BERMAN,
MILTON H. COHEN,
for the Securities and Exchange Commission.
SIMPSON, THACHER & BARTLETT, by JOHN F. MACLANE, 120 Broadway, New York City, and
REID & PRIEST, by FRANK A. REID, 2 Rector Street, New York City,
appearing for the Respondents.

[293] The Examiner: You may proceed.

Mr. Berman: May it please you, Mr. Examiner, subsequent to the adjournment of the hearing at the last session in this proceeding, the Securities and Exchange Commission issued its memorandum opinion and order with respect to procedural matters concerning adjournment, and I now ask that the original of the Commission's opinion and order be received in evidence as Commission's Exhibit 75.

The Examiner: Admitted.

[Commission Exhibit 75 was received in evidence.]

Mr. MacLane: If the Examiner please in connection with the introduction of that exhibit, I have no objection of course to its introduction, but I think it is only fair to the respondents to comment that the statement made by the Commission in the order, which is doubtless an inadvertence, that counsel (that is for the respondents) have requested a continuance to September 9, and have stated that such continuance is necessary; first, to formulate objections

on the ground of relevancy of certain of the documentary evidence in the record; and second, for the further preparation of respondent's case—does not comport with the statement which we made. We stated that we were prepared to state our objections, but we thought it would be more convenient if the hearing were [*294*] adjourned to permit us to formulate them; and furthermore, we made no application and have made no application for a continuance since the case started on the 17th, I believe it was, of June, for the purpose of obtaining time for preparation. I merely thought that it was due to us to make that statement in the record so that our position would be clear. It doesn't affect the substance of the situation.

The Examiner: Well, whatever you stated at the oral argument before the Commission was taken down at that time, doubtless.

Mr. Berman: Yes, I think it will be made clear. Mr. Cohen pointed out in the oral argument that no formal motion was before the Commission on the part of the respondents, but the substance of conferences between counsel and ourselves, and on that basis the Commission thought it advisable to act.

Mr. MacLane: I didn't want the imputation of recalcitrancy to remain unchallenged.

[Discussion off the record.]

Mr. Berman: If you will permit us, I regret to ask at this time, Mr. Examiner, but I should like to have a very brief recess in order to discuss with counsel a certain stipulation and see what we can agree as to its terms. It is necessary to do this because if we agree on a stipulation, that will substantially complete Commission counsel's case, and counsel for the respondents prefer that we proceed in that [*295*] manner.

The Examiner: How long a recess do you desire?

Mr. Berman: Five or ten minutes.

The Examiner: We will take a short recess.

[Whereupon, a short recess is taken after the hearing is resumed.]

Mr. Berman: Mr. Examiner, in the opinion of the Securities and Exchange Commission issued on July 30, 1940, in the present proceeding, which opinion is in evidence in this proceeding as Commission Exhibit 74, on page of said opinion the Commission expressed the view that the references to sections 6 and 7 applications, and declarations, are not sufficiently specified, and unless further specification is made, the Trial Examiner is directed not to treat these documents as evidence sufficiently specified in the present proceeding. In the pursuance of this statement by the Commission counsel for the Public Utilities Division seeks at this time to remedy the deficiency to which the Commission alluded and for that purpose it states that it relies upon the following pages of the official transcripts of the various financing proceedings in the following manner and with the following specific references:

The proceeding of Portland Gas & Coke Company, Commission Docket 70-23-1-2, testimony of Paul B. McKee, page 9, line 21 to page 10, line 12;

Page 26, line 26 to page 27, line 1;

[296] Page 33, line 18 to page 35, line 5;

Page 39, line 9 to page 39, line 24.

Testimony of Samuel W. Murphy: Page 45 to page 56;

Page 123 to page 140.

Northwestern Electric Company, Commission Docket 32-173-1-4:

Testimony of Paul N. McKee, page 13 to 19, line 13; page 50 to 57.

Testimony of George G. Walker: Page 127 to page 153.

Testimony of Duncan R. Linsley: Page 155 to page 183.

Testimony of David W. Jack: Page 184 to 193.

Washington Water Power Company, Commission Docket 42-220-1-2:

Testimony of K. M. Robinson; page 5, line 5 to page 9, line 6;

Page 16, line 6 to page 17, line 17.

Testimony of Samuel W. Murphy; page 26 to page 41; page 72 to page 73.

Testimony of Francis Kernan, Jr.: Page 46 to page 56.

Kansas Gas and Electric Company, Commission Docket 70-23- [*297*] 1-2:

Testimony of Murray M. Gill: Page 8 to page 18, line 8.

Testimony of Samuel W. Murphy: Page 30 to 60, line 4.

Testimony of Charles E. Koch: Page 73 to page 81, line 16.

Pennsylvania Power & Light Company, Docket 32-164-1-3:

Testimony of John S. Wise, Jr.: Page 11 to page 12.

Testimony of Samuel W. Murphy; Page 27 to page 54; Page 101 to page 125, line 20; page 196 to page 211.

Carolina Power & Light Company, Commission Docket 70-52-1-3.

Testimony of Samuel W. Murphy: Page 7 to page 16; Page 21 to page 60, line 22.

Testimony of Louis V. Sutton: Page 90 to page 104, line 11.

In each case where I state from one page to another, it is to that other page inclusive, of course. Taking the proceedings, the titles of which have been recited in order, the proceeding of Portland Gas & Coke Company is in evidence in this proceeding as Commission's Exhibits 40-A and

40-B; the proceeding of the Northwestern [298] Electric Company is in evidence here as Commission's Exhibit 43; the proceedings of Washington Water Power Company is in evidence as Commission's Exhibit 42; the proceedings of Kansas Gas & Electric Company is in evidence as Commission's Exhibit 41; the proceedings of Pennsylvania Power & Light Company is in evidence as Commission's Exhibit 39; and the proceedings of the Carolina Light & Power Company is in evidence as Commission's Exhibit 44.

Mr. MacLane: I understand from your last statement, Mr. Berman, that what you mean is that this testimony is contained within the documents which have been identified as Commission exhibits numbered as you have stated?

Mr. Berman: That is correct.

Mr. MacLane: In other words, these are the parts of the exhibits on which you are relying and which you specifically offer in evidence?

Mr. Berman: In support of the various propositions for which these various exhibits were cited in our original statement to you.

Mr. MacLane: Yes, all right.

Mr. Berman: We believe that these references satisfy the requirements of the Commission's opinion, and we understand that counsel for the respondents agree that that is so as to its specificity?

Mr. MacLane: We agree that this is sufficient specifica- [299] tion of the parts of the exhibits to satisfy the objections which we made to the receipt of these voluminous exhibits in bulk, and I believe that we are willing to agree that this testimony may be regarded as in evidence here with the same effect and to the same extent as though these witnesses had personally appeared and made these statements in this proceeding.

Mr. Berman: That is agreed.

Mr. MacLane: However, we of course have not had an opportunity to check these parts of the records to see whether counsel has inadvertently omitted anything which might qualify, explain, or otherwise affect what is stated, and we wish to expressly reserve the right, if we find such a case, to call attention to any other parts of the records which might be properly considered in connection with what he stated. I make that observation merely out of caution and not because I believe there is anything of that kind, but simply because it is of course possible that there may be something which counsel has inadvertently not specified.

Mr. Berman: Well, Judge, these of course are the references upon which we, the Commission counsel, rely. They do not bind you in any way, and you have the right to seek to contradict or vary them or supplement them as you see fit.

Mr. MacLane: I am referring solely to what the record on its face discloses. Now, as to the general proposition, of course the holding companies in question were not parties to [*300*] those financing proceedings, and my stipulation at least that these witnesses may be regarded as having testified as shown on these pages of these exhibits, does not preclude witnesses on behalf of these companies, appearing in this proceeding and further explaining or stating, if they have anything further to explain or state, as to their connection with financial matters.

[Discussion off the record.]

Mr. MacLane: On the assumption, Mr. Examiner, that Commission counsel has now completed the testimony which he proposes to offer, before he formally announces that he rests, or its equivalent, I desire to file here our objections to the exhibits and parts of the exhibits for the formulation of which this hearing was adjourned on August 12. I am perfectly willing to avoid the delay which

would be incident to reading these objections for the record, but I may say the objections are stated in merely a few pages of this volume which I am going to offer, the balance of the pages being merely a catalogue of the exhibits, which was prepared so that we could specifically call attention to those parts which we understood were not relied upon so that they may at an appropriate time be stricken from the record. Should this be marked as an exhibit?

Mr. Berman: What form does it take, Judge, is it in the form of a motion to strike, or a motion containing objections [*301*] on the ground of relevancy and materiality, and so forth?

Mr. MacLane: The document is designated, "Statement by respondents' counsel on objections to exhibits and parts of exhibits," and its opening paragraph reads as follows:

> "Pursuant to the reservation of the right to make objections to documentary evidence offered by the Commission counsel as exhibits, noted in the transcript of hearing of June 18, 1940 (identified by pages) and the opinion and order of the Commission dated July 30, 1940 (Commission Exhibit 74) upon the respondents' motion addressed to said exhibits at the conclusion of the hearing on June 19, 1940, the above-named respondents Electric Bond & Share Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company, enter on the record herein the following objections to said Commission exhibits."

These objections are specified to the exhibits in their chronological order. At the conclusion of the statement of the objections, the following statement is made:

> "The foregoing objections are stated for the record in accordance with the reservation first above set forth

and the opinion and order of the Commission dated July 30, 1940, and also in accordance with leave granted by the Commission to formulate such objections in its memorandum and opinion order dated August 13, 1940. As stated in said opinion order respondents by their counsel waive any right to insist upon [*302*] said objections being presently passed upon either by the Examiner or the Commission, with the distinct understanding, however, to be preserved by stipulation in the transcript of oral record, that such objections are not waived but are preserved to be passed upon by the Commission before the final submission of the case."

Mr. Berman: Well, I take it that this statement will be construed as a motion for purposes of it being passed upon by the Examiner or the Commission, whoever is to pass upon the objections? If counsel for the respondents wish, they can, during the course of presenting their evidence, offer this statement in evidence as an exhibit I take it, Mr. Examiner although I suppose it would form part of the record of the proceedings whether or not it is received as an exhibit? I take it that that is up to them. Certainly Commission counsel will not offer it as an exhibit. As counsel for the respondents have said, the understanding is that a ruling on these objections will not be pressed for at this time. Accordingly, counsel for the Commission reserves the right, at some proper time in the course of this proceeding, to file herein, in the record of the proceeding, a reply to these objections, joining issue with the respondents and stating the position of the Commission counsel with respect to these various objections. That will be done at some time prior to the conclusion of the proceeding and [*303*] before these objections are ruled upon.

[Discussion off the record.]

Mr. MacLane: The respondents will at this time offer this document entitled "Statement by respondents' counsel on objections to exhibits and parts of exhibits", and in lieu of having it copied into the record, into the transcript of the record, as might be otherwise appropriate procedure, is willing that it should be designated and suggested to be designated as Respondents' Exhibit No. 1.

Mr. Berman: No objection.

Mr. MacLane: May it be expressly stipulated upon the record that these objections as noted in Respondents' Exhibit No. 1, are preserved for the record with the same effect as though they were copied into the transcript of the oral record, and that decision thereon may be reserved with the right of Commission counsel to file counter statement before action upon them.

Mr. Berman: It will be so stipulated.

The Examiner: It is so ordered, and the document is admitted as Respondents' Exhibit No. 1.

[Respondents' Exhibit 1 was received in evidence.]

Mr. Berman: Will the record show then, Mr. Examiner, that we have no further evidence to adduce at this time.

Mr. MacLane: The Commission counsel having completed [*304*] their case at this time, and in effect having rested with whatever effect a rest may have on a proceeding of this kind, the first thing that respondents should do, I think, in connection with this record is to formally withdraw the appearance which we made at the outset for American & Foreign Power Incorporated, which was dismissed as a party to these proceedings by an order of the Commission dated the 17th of June, 1940, and which appears as one of the exhibits in this case. Consequently, the appearance of Simpson, Thacher & Bartlett, by John F. MacLane, and the appearance of Reid & Priest by Frank A. Reid, for the American & Foreign Power Company Incorporated, are withdrawn.

Mr. Berman: That was done, I believe, Judge, at an earlier point in the proceeding, but I have no objection to doing it again if you wish.

Mr. MacLane: I think I stated that I would do it at an appropriate time.

Mr. Berman: That may have been the case. However, there is no objection.

Mr. MacLane: We have prepared for the record, as we stated would be prepared at the last session here, a formal motion to dismiss, and I tender this document entitled, "motion to dismiss" in this proceeding, to the reporter, and ask that it be marked Respondents' Exhibit No. 2; and am handing 20 copies of the printed motion to counsel for the [*305*] Commission. I ask that this motion to dismiss be received as Respondents' Exhibit No. 2, and for the reason stated therein I at this time move that these proceedings be dismissed as against the respondents, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company. As agreed with the Commission at the former hearing on August 12, I waive any right that we might otherwise have to urge this motion before the Commission at this time, with the understanding that it is to be preserved in the record for submission in connection with the final submission of the case, or such earlier time as the Commission may order of its own motion.

Mr. Berman: I believe, Judge, that the rulings of the Commission provide that a motion of this type should be filed either with the Secretary of the Commission or with the Trial Examiner, so that I think the Trial Examiner should receive these more appropriately.

[Discussion off the record.]

The Examiner: The motion is received and will be referred to the Commission at the appropriate time.

[Respondents Exhibit 2 was received in evidence.]

[306] Mr. MacLane: I now tender to the Examiner as Respondents' Exhibit No. 3, a document entitled, amended answer, dated September 9, 1940, and signed by Simpson, Thacher & Bartlett, by myself; and by Reid & Priest, by Frank A. Reid; also accompanied with 20 copies. I ask that that amended answer be received as Respondents' Exhibit No. 3.

Mr. Berman: Might I say with respect to that, Mr. Examiner, that I am not certain what the rules of the Commission require as to amendments to formal documents, I mean the time limitation. I must reserve the right to object on that ground, if it should appear that the time is greater than that permitted; but I would say otherwise that I am not disposed to stand on any formal objection. I want to have the right to examine the rules of the Commission with respect to amendments to pleadings and so forth. In other words, I don't know whether the respondents have the right at this time to amend their answer as a matter of course at this date in the proceeding, and I reserve the right to inquire into that matter and possibly to make some objection on that ground, although I don't contemplate that I definitely will.

Mr. MacLane: I want to call attention to the fact that on page 9 of the record I mention the fact that the original answer was filed with the Commission on June 5, 1940, and asked it to be deemed as regularly filed and part of the [307] record. Then the stenographer has noted a discussion off the record. I may say that that discussion was to this effect, that the answer should be identified as an exhibit when we came to submit our case, and then there appears in the record:

"Mr. MacLane: At what the Commission deems the appropriate time I presume this answer may be filed as part of our case and in the statement now made of

the appearances we reserve the reservations stated in that answer."

Consequently, there is, as the proceedings were conducted no answer which has been formally received in the case. If there is any question of the appropriateness of this amended answer, I suppose our original answer should be filed. There is really no difference between the two documents except that the amended answer omits all reference to the American & Foreign Power Company, and has dropped it because of the fact that American & Foreign has been dismissed from the proceedings. It therefore seemed to us inappropriate to at this time offer as an exhibit or as a filing, an answer on behalf of American & Foreign Power Company.

Mr. Berman: Is that the only change?

Mr. MacLane: No, just a moment—and in addition to that, there is one other thing, one other change in the amended answer in the insertion of a final paragraph 53, which refers to the so-called tentative plan of integration filed by Bond & Share in 1938. [*308*] Now, that was previously referred to only—and possibly indirectly—in part 1 of the answer, and it seemed to me that possibly the reference was not complete. Consequently, since we were filing an amended answer, we, in addition to excluding the American & Foreign Power Company, added this paragraph 53. Otherwise, the two documents are, I believe, precisely the same.

Mr. Berman: I think Judge MacLane is not correct in stating that because the previous answer, the original answer of the respondents, has not yet been received in evidence, that it does not form a part of the record in this proceeding, because it is my understanding that any of the pleadings filed in a proceeding, so long as they are formally filed, actually form part of the record even though they

have not been formally introduced as an exhibit. In a sense the introduction as an exhibit is superfluity, you might say, and merely done to keep the record perhaps in a more orderly way, but the original answer, of course, will form part of the record in this proceeding and I merely raise the question about whether you had the right to amend the answer at any stage of the proceeding. I don't assume we will want to stand on any technical objection there, but I did want to reserve some right to inquire into the matter.

The Examiner: Received as Respondents' Exhibit 3, subject to Commission counsel's right to object.

[*309*] [Respondents' Exhibit 3 was received in evidence.]

Mr. MacLane: So long as the original answer is a part of the record, I shan't further encumber it, by identifying the original as an exhibit, because we are going to proceed on the theory that the amended answer is the answer under which our case is being presented. Now, Mr. Examiner, I have remarked two or three times here that I claim no expertness in the presentation of these matters before the Commission. Generally speaking, the proceedings are not unduly formal, but it seems to me appropriate, in a case of this importance, to proceed generally as though it were a proceeding in a court at law, and if this were a proceeding in a court of law, I would at this time outline the issues as we understand them here, and the evidence which we propose to tender in support of the issues on our part, and give the Examiner or the Commission some guide to the purpose and scope, and what we conceive to be the effect of the testimony which we propose to offer. Therefore, with the permission of the Examiner and if there is no objection on behalf of counsel, I shall proceed to make a statement somewhat in the nature of an opening statement of counsel in a defense of a proceeding at law.

This proceeding is brought under Section 11(b)(2) of the

Public Utility Holding Company Act which provides, so far as here material, that it shall be the duty of the Commission as [*310*] soon as practical after January 1, 1938, to require by order, after notice and opportunity for hearing, that each registered holding company and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to insure that the corporate structure or continued existence of any company in the holding company system, does not unduly or unnecessarily complicate the structure or unfairly or inequitably distribute voting power among security holders of such holding company system.

The proceeding has been initiated by the Commission under this section by notice of and order for hearing, addressed to Electric Bond & Share Company, and the subsidiary holding companies in its system, and Ebasco Services Incorporated. This notice and order, after a description of the system, states in paragraphs 46 and 47 that the Commission has "reasonable grounds to believe that" the "structure of the holding company system of said Electric Bond & Share Company is unduly and unnecessarily complicated," and that "voting power is unfairly and inequitably distributed among security holders of the system".

By a supplemental order dated June 7, 1940, the Commission limited the hearing "initially to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, [*311*] National Power & Light Company, and American and Foreign Power Company Incorporated, or any of them, in order to insure that the structure of the holding company system of Electric Bond & Share Company shall not be unduly or unnecessarily complicated, and that voting power shall not be unfairly or inequitably distributed among security holders of such system".

Subsequently, by order dated June 17, 1940, American

and Foreign Power Company Incorporated was dismissed as a respondent in the proceeding, and consequently the hearing at the present time is limited to the question of whether it is necessary to discontinue the existence of American, National or Electric Companies.

However, since the order of June 7, 1940, expressly the reserved jurisdiction over the whole question of corporate simplification of the system, including other subsidiary holding companies originally name, Ebasco Services and subsidiary operating companies, the respondents have filed and there has been accepted as part of this record, a comprehensive answer to all the issues, and the entire issue raised by the notice and order, and, as we shall develop in the testimony, the question of the elimination of these three above-named holding companies and the resultant redistribution of voting power cannot be solved in vacuum, but must be solved by considering the system as a whole and the relationship of its component parts.

[*312*] This, we believe, is clearly recognized in the testimony or exhibits offered and identified by Commission counsel, as well as in their statement of their contentions, as orally expressed at the hearing of June 19th, and embodied in the transcript beginning at page 173.

We think it appropriate to observe that in its original Notice and Order, even as supplemented and limited by the Order of June 7th, the Commission has made no specification of reasons or grounds for its charges, if they be such, that the holding company system of Electric Bond and Share Company is unduly or unnecessarily complicated or voting power unfairly or inequitably distributed. Presumably the Order was intended to initiate an investigation of the subject on the basis of which their specific charges might be predicated, or tentative conclusions reached, upon which, after such further formalities as the law may require, a definitive order might be issued.

I am not discussing at the moment whether this is or is not an appropriate method of procedure. My only point in the observation here is that by its Order, on which this hearing is being held, the Commission has opened a field of investigation as broad as the statute itself. Counsel for the Commission has endeavored to clarify the issue on making the statement of their position (Transcript, pages 173 to 180).

As we understand counsel's position briefly is as follows:

[*313*] First—there is superimposed on each operating company in the system two holding companies and a service company. That all proper holding and service company functions could be performed by Electric Bond and Share Company and Ebasco Services, and "that the three sub-holding companies perform no indispensable functions, nor even any important funtions, except the strictly corporate functions necessitated by their own existence, and that the continued existence of the sub-holding companies results in unnecessary expense, aggregating for the three companies in the year 1939 approximately $1,102,225.

Second—the existence of the three sub-holding companies constitutes a means of unfairly and inequitably distributing voting power, in that same $2,100,000,000 of consolidated assets of the three sub-holding company systems are controlled by Bond and Share through the total investments carried on the books of Bond and Share at a value of $120,000,000, or a ratio of approximately 17.5 to 1. The market value of the securities owned by Bond and Share is much less than the ledger value. In this connection it is pointed out that there are preferred dividends in arrears on publicly held stock of American Power & Light Company and Electric Power & Light Corporation as well as substantial arrears on preferred dividends of some subsidiaries. On these facts it is concluded that the holding

company structure and resulting dis- [*314*] tribution of voting power are obnoxious to the standards of the statute, and that these three sub-holding companies should be eliminated through termination of their corporate existence.

Despite the vague language of the statute, and the breadth of discretion thereby vested in the Commission, we do not believe that the conclusions of "undue" or "unnecessary" complications or "unfair" or "inequitable" distribution of voting power may be predicated on the simple facts that there are two holding companies and that a relatively small portion of investment "controls the whole." However this is a question for Commission determination and is not argued here.

But, as the case now stands it is necessary that the Respondents prove that the holding companies have in the past, now continue, and will in the future perform a useful function in the system. That the expense of maintaining their existence is not disproportionate to their utility, and the distribution of voting power between security holders is neither unfair or inequitable.

I do not mean that this burden rests affirmatively upon Respondents under the statute and I do not imply or concede that each of these facts must be proven to meet any burden that Respondents must carry, but I do mean that to meet fully the contentions of Commission counsel and the general charges of the Notice and Order that counsel for the Respondents in discharge of their duty to their clients must cover the [*315*] whole case for any determination that the Commission initially or the courts ultimately may make as to the meaning and effect of this statute and the duty and power of the Commission thereunder. Consequently, it seems to me we must show what this holding company system is. We must show the relationships of the parts, that is, of the operating companies to the holding companies immediately involved and their relationship in

turn, to Bond and Share. We must show what functions the holding companies and Bond and Share played in the creation of the system and we must show how and on what considerations voting power was distributed among security holders. We must show what functions the holding companies presently perform, and we must show what utility they will serve in the system in its future evolution under the statute.

Now I am not unmindful that this system is under attack in a companion proceeding pending before the Commission involving application to it of the integration provisions of Section 11(b) (1) of the Act. I recognize that it will be contended on behalf of the Commission in that proceeding and it may be found by the Commission, that this system cannot continue to exist as at present constituted, but that there must be a re-grouping of properties and complete or partial dissolution of Bond and Share control over the properties as re-grouped. That in this process some of those sub-holding companies must limit their operations and as a result thereof [*316*] modify their structure.

It has been and is difficult for me to see how Section 11(b) (2) can be applied to the companies in this system, until the ultimate form of the system or resulting systems is determined under 11(b) (1), and I believe the Commission has recognized this in its press release suggesting the possibility of consolidating the two proceedings. Some of the testimony which we will introduce will be pertinent not only to this proceeding but also to the proceedings under Section 11(b).(1).

[*317*] Specifically, we shall contend in this proceeding that the place of these three holding companies, National, Electric and American in any regrouping of properties by way of integration under Section 11(b) (1) must be taken into consideration. This will involve some examination, not for approval or rejection, but by way of description, of the

integration plans submitted by Bond and Share in November, 1938.

The future functional utility of the holding companies must of necessity involve their relationship to such a plan of integration, and hence testimony with respect to that plan, not for the purpose of securing its definitive consideration, but for the purpose merely of relating these existing holding companies to such plan, will be necessary in this proceeding.

In the presentation of our testimony, we shall avoid as far as possible any surplusage or duplication, but we desire, even at the expense of some time, to develop our record clearly and systematically, placing definitely in the record such definitive matter and such portions of exhibits as may be otherwise available to the Commission which will nevertheless be essential to a clear narrative statement and understanding of the situations described and the facts upon which conclusions will be predicated.

Now I do not propose to argue here any question of law, but I think it is both appropriate and desirable that I state our legal position following generally our answer so that the [*318*] relevance of some of our testimony to the legal position may be clear.

The answer contains four parts:

Part I is a statement of the constitutional and legal objections to Section 11(b) (2) of the Act and the procedure adopted by the Commission looking to its enforcement. These objections are taken either to the statute itself or to the form of the Notice and Order and the procedure adopted by the Commission thereunder. They require no testimony in their support. They involve purely questions of law and are reserved for argument either before the Commission in connection with final submission of the case or later in the courts, if legal proceedings should result from the Commission's Order. It is sufficient to say here

that by proceeding with our testimony we do not waive these constitutional and legal points, but expressly reserve them in the record for later consideration.

Part II of the answer is strictly a technical answer, admitting, denying, qualifying or explaining the allegations, statements or charges made in the Notice and Order. In substance, it denies that the holding company system of Bond and Share and the sub-holding companies is unduly or unnecessarily complicated and denies that voting power is unfairly or inequitably distributed, and alleges affirmatively that the system is simple and free from complication, and that voting power is fairly and equitably distributed.

[*319*] Part III may be said to be a counterpart of Part II. It alleges affirmatively the composition of the system, voting power attributable to securities, and like matters. For present purposes it may be sufficient to refer here to paragraphs 45 and 46 of the amended answer on pages 15 and 16, which were paragraphs 48 and 49 on pages 17 and 18 of the original answer.

Without reading them in detail, paragraphs 48 affirmatively alleges that all securities issued by the various companies in the system were lawfully created and issued in accordance with the applicable laws of the States involved and in accordance with lawfully adopted and applicable provisions of charters and by-laws of the companies. That the voting powers with respect to securities were fixed by contract. The securities to which they pertain were delivered for property or sold for cash, with voting rights attached thereto, in all respects in accordance with applicable laws and prior to the passage of the Holding Company Act, and upon these facts it is alleged that any involuntary impairment or violation of Respondents, or any other stockholders' vote or other titles or rights would be without due process of law.

Paragraph 46 of the amended answer, which was para-

graph 49, alleges that neither Bond and Share nor the other holding company Respondents here involved are engaged in interstate or foreign commerce or in transactions affecting such commerce; [*320*] that the subsidiaries are engaged primarily in intrastate public utility business, and such of them as are engaged in interstate commerce are so engaged only incidentally; that neither Bond and Share nor any of the Respondents control, obstruct, impede or affect interstate or foreign commerce done by subsidiaries, nor does present corporate existence or structure or distribution of voting power of any company in the system affect such interstate or foreign commerce.

Whatever position the Commission may eventually take with respect to either contract rights of security-holders or questions arising under the commerce clause of the Constitution, it is obvious that it is incumbent upon Respondents in this proceeding to show for consideration of the Commission and preservation of the record on their constitutional defenses, the manner of creation of security issues with the voting rights pertaining thereto and the relationship to interstate commerce of the various companies in the system. While we do not assume that the Commission itself will be greatly concerned by the exact degree or extent to which particular subsidiaries of holding companies may be engaged in interstate commerce or in business so affecting interstate commerce as to be subject to Federal regulation, we believe that it will not be disputed, that if it were affirmatively shown as to any particular holding company and its subsidiaries that no interstate commerce was involved that the [*321*] Commission would be required to hold the statute inapplicable to that part of the system just where the line should be drawn, if at all, on the showing that will be made, we do not pretend to say at this time. But, obviously, the impact of the commerce clause of the Constitution on this particular

system is a matter of proof, whatever legal conclusion may be drawn from the facts thus proven.

Part IV of the answer is a seperate affirmative defense which relates primarily to time considerations. Section 11 of the Act requires the Commission to proceed under these sections "as soon as practicable". While these words are not further defined, we assume that in view of the reiteration throughout the Act of investor-consumer interest as the controlling guide of Commission action, that the phrase should read as though it said "as soon as practicable, having due regard to the interests of investors and consumers".

We suggest briefly in Part IV of the answer the considerations which are involved in the determination of investor-consumer interest. The incidence of the present World War, the disturbed conditions of financial markets, the demands of the National Defense Program, and finally, the steadily improving condition of the member companies in the system under their present control and management, and the necessity of preserving these sub-holding companies pending consideration of a definitive place of integration of operating utilities, [*322*] are briefly referred to as considerations bearing upon the timing of these proceedings, or any order which would require the dissolution or radical change of structure of companies in the system. Of some of these matters the Commission might perhaps take judicial notice, but brief testimony will be introduced to specifically direct the attention of the Commission to these problems.

We have given careful consideration to the order as well as to the content of proof. Subject to unforseen exigencies, we shall begin with the Electric Bond and Share Company which, while it is not presently threatened with elimination or change in its intracorporate structure, is necessarily vitally concerned in the determinations to be

made with respect to its immediate subsidiary holding companies.

We shall describe briefly its history, its development and its functions in the creation and maintenance of the system. We shall also give a brief preliminary view of the integration problem as bearing upon the future utility of both Electric Bond and Share Company and the three subholding companies in carrying out what we conceive to be the purposes of the Act. This will be followed by similar detailed description of the history, development, security acquisitions and holdings, further, of the subholding companies, National, American and Electric, in the order named. We shall then conclude with more specific testimony as to the function- [*323*] ing of the system at present and the development of the integration and coordination of its properties and future plans relating thereto, and such further general testimony applicable to the situation as a whole as will complete the case. . . .

MEMORANDUM

The transcript of testimony which follows covers over 18,000 (typewritten) pages and includes references to more than 2,000 exhibits received in evidence. In accordance with the stipulation of the parties, dated January 22, 1943, this testimony is omitted and the only remaining testimony printed is that of the closing days of the hearings. Such omission is without prejudice to either party to refer to the intervening pages of the transcript of testimony in accordance with the provisions of said stipulation.

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[*18258*] Mr. Calkins: I ask to have marked as Respondents' Exhibit 326 for identification, a document entitled "Before the Securities and Exchange Commission, in the

Matter of [*18259*] American Power & Light Company, File No. 54-37; motion to consolidate."

[Respondents' Exhibit 326 marked for identification.]

Mr. Calkins: Attached to this document which has been marked Respondents' Exhibit 326 for identification as Exhibit A, is an application under Section 11(e) of the Holding Company Act, for approval of a plan to enable the American Power & Light Company to comply with subsection (b) of Section 11 of the Holding Company Act.

Also attached is a copy of the proposed plan of reorganization referred to. I ask if Mr. Berman will stipulate that this application for approval and the plan, were filed with the Commission on July 23, 1941, and given file number 54-37?

Mr. Berman: I believe those facts are correct. I am not certain as to the precise date, but I think the date stated is substantially correct.

Mr. Calkins: There is no question but that these papers have been filed with the Commission.

Mr. Berman: As fas as I know, there is no question about it.

Mr. Calkins: Will you also stipulate that the motion to consolidate was filed with the Commission on December 6, 1941?

[*18260*] Mr. Berman: I believe that is correct, as well.

Mr. Calkins: I offer this document as Respondents' Exhibit 326.

Mr. Berman: Mr. Examiner, I will object to the admission of Respondents' Exhibit 326 on the ground that it has no bearing and is in no way relevant to the present proceeding. It is a document filed by the respondents in connection with a different matter and a different proceeding, and it refers to a motion coming before the Commission at the present time. There is no need for the respondents to

introduce it in evidence in this proceeding if they wish to refer to in it argument before the Commission or elsewhere with respect to this proceeding, because it forms part of the formal records and files of the Commission and it is before the Commission as a file. Accordingly, I object to its admission.

Mr. Calkins: I might call attention to the fact, Mr. Examiner, that throughout these proceedings it has been the practice of Commission counsel to offer as exhibits in the proceedings, all the formal orders and notices that have been issued by the Commission. They would be just as accessible for citation as this document, but he has seen fit to put his papers in as exhibits, and I think this should be marked as an exhibit.

Mr. Berman: This is not a pleading in the present pro- [18261] ceeding. It is a pleading in another proceeding. I have inserted only those documents which are part of the record of action of the proceeding before us now. You are seeking to introduce a document which is a pleading in another proceeding.

Mr. Calkins: This proceeding has been instituted under Section 11, and the present issue, in so far as American Power & Light Company is concerned, is whether American Power & Light Company should be dissolved. This plan which has been filed by American Power & Light Company with the Commission sets forth a proposal for the compliance with Section 11 of the Act, and I think that it is material and relevant in this proceeding.

The Examiner: Quite possibly it relates to Section 11; quite possibly it is a matter which the Commission will want to consider before it finally makes up its mind. It is quite probable. But, nevertheless, we are here restricted to this particular proceeding and not the power of the Commission or the action of the Commission. The hearing is restricted to 11(b) (2).

[Objection sustained.]

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: Surely, it will be noted.

Mr. Calkins: I ask to have marked as Respondents' [*18262*] Exhibit 327-A, 327-B and 327-C for identification, respectively, a certified copy of excerpts from minutes of the board of directors of American Power & Light Company held on April 23, 1941, June 25, 1941, and July 23, 1941.

[Respondents' Exhibits 327-A, 327-B and 327-C marked for identification.]

Mr. Calkins: Before offering these documents as exhibits, I ask Mr. Berman if he will stipulate that he raises no objection to the fact that Mr. Jack, secretary of the company, has not been present to identify these excerpts from the minutes, and that if he had been present he would testify that the excerpts contained in these exhibits which have been marked for identification, are true and complete excerpts containing all the portion of the minutes of these meetings relating to the matters contained in such excerpts.

Mr. Berman: I raise no formal objection of the nature indicated by Mr. Calkins, and I will stipulate in the manner he has requested.

Mr. Calkins: Thank you. I now offer these three excerpts from the minutes of American Power & Light Company, the minutes of board of directors, as Respondents' Exhibits 327-A, B, and C.

Mr. Berman: Mr. Examiner, I will not object to the admission of these documents.

[*18263*] The Examiner: Admitted.

[Respondents' Exhibits 327-A, 327-B and 327-C received in evidence.]

Mr. Calkins: I ask that there be marked as Respondents' Exhibit 328 for identification, a copy of a letter dated

December 31, 1941, addressed to Milton Cohen, Esq., Attorney, Securities and Exchange Commission, and signed "J. F. MacLane".

[Respondents' Exhibit 328 marked for identification.]

Mr. Calkins: Before offering this letter as an exhibit, I ask Mr. Berman if he will stipulate that this letter correctly represents the substance of the conversation referred to in the letter, and that there was no dissent of record or otherwise to the statements contained in the letter.

Mr. Berman: Well, I don't think I should stipulate to that effect because I am going to object to the admission of the letter in evidence. Therefore, the stipulation as such would be meaningless. I am perfectly willing to say for the record that on December 31, 1941, counsel for American Power & Light Company conferred with counsel for the Public Utilities Division, and pursuant to a mutual understanding agreed not to urge immediate consideration of motions to consolidate [*18264*] the 11(e) plans of Electric Power & Light Corporation and American Power & Light Company, with the 11(b) (2) proceedings. I think that is the substance of what Mr. Calkins wants, and I am perfectly willing to have the record show that.

Mr. Calkins: Thank you, Mr. Berman. I offer this letter as Respondents' Exhibit 328.

Mr. Berman: I object to the letter. May I further state that certain portions of the letter have subsequently been superseded by other agreements of counsel, and that the letter no longer represents the accurate state of affairs with respect to this matter. I think the statement I made on the record gives Mr. Calkins what he wants, without bringing in a matter which is now inaccurate.

Mr. Calkins: I still ask that it be admitted.

The Examiner. Off the record.

[Discussion off the record.]

The Examiner: Objection overruled, I will admit it.

[Respondents' Exhibit 328 received in evidence.]

Mr. Berman: Will the record kindly note my exception to the admission of this document on grounds of irrelevancy and inaccuracy.

The Examiner: Certainly.

[*18265*] Mr. Calkins: I would like to call Mr. C. N. Phillips as a witness.

CALEB N. PHILLIPS,

recalled as a witness on behalf of the respondents, previously sworn, testified further as follows:

Direct Examination by MR. CALKINS:

Q. Will you kindly state your name? *A.* Caleb N. Phillips.

Q. Were you previously sworn as a witness in this proceeding on December 12, 1940? *A.* I was.

Q. At that time did you confine your testimony as to your engineering experience, to your familiarity with the physical properties of companies in the Electric Bond and Share Company system and the manner in which they are interconnected and operated? *A.* Yes, I did, as I was primarily testifying about the movement of power over State lines, I naturally emphasized that section of my experience at that time.

Q. Will you now describe in a general way your experience in construction and valuation of public utility properties? *A.* From the time of my graduation from Purdue University in 1908, until 1923, I actively followed my pro- [*18266*] fession in various sections of the country. In this time my work included estimates of cost, designs, economic studies and supervision in carrying out of construction on projects of a wide variety and kind. Since 1923 I have been associated with the Service Company of Electric

Bond and Share Company, and in that period of time I have taken part either in a direct supervisory capacity or consulting capacity, with the preparation of over a billion dollars worth in total amount of appraisals made by the Service Company, by the operating companies and by other engineers in various ways. My activities in this connection have been very largely subsequent to the year 1932, although they lap back into the previous period extensively.

Mr. Berman: May I interpose just on that point, Mr. Phillips?

Q. (by Mr. Berman): The appraisals you have referred to which you made as an engineer of the staff of Bond and Share or of Ebasco services and various subsidiaries of the Bond and Share system, were they the types of appraisals which were prepared either in connection with or in justification of, write-ups that were permitted in the plant accounts of these companies? A. No, sir.

[*18267*] Mr. Calkins: Pardon me, Mr. Phillips. Mr. Berman, I do not have any objection to your interrupting and asking some questions, but I don't think we should get into this controversial subject at this time.

Mr. Berman: Well, the witness is endeavoring to qualify himself and has mentioned that he has prepared appraisals involving over a billion dollars. Now, it seems to me the record ought to show what sort of appraisals they were, if Bond and Share engineers were sent out to bring back an estimate or appraisal showing the properties to be worth more than what they are on the books of predecessors, so they could be written up, that hardly, it seems to me, affords any basis for a claim of experience which would qualify this witness as an expert in appraisal work of a character which would be helpful in this proceeding or in any other proceeding. That is why I thought I ought

to ask the question at this time because it bears on his qualifications.

The Examiner: Let me ask, is that question pending?

Mr. Berman: I think it is.

Mr. Calkins: Yes, sir.

The Examiner: All right.

The Witness: I have never had anything to do in any way with any alleged write-up and no valuation that I was ever [*18268*] connected with had any bearing or relation to it. The valuations that I have been connected with either in a consulting capacity or the ones I have actually supervised, have been for the sole purpose of finding the true value of, or cost of the property, irrespective of whatever might be on the books of the company.

The Examiner: Were they to any considerable extent made before purchase or were they made after purchase?

The Witness: Most of the ones that I have made have been properties that were already a part of the so-called Bond and Share System. Some few of them have been made in connection with sales of the property by the Company, principally to Governmental bodies.

Q. (by Mr. Berman): Well, Mr. Phillips, didn't you have some connection with an appraisal made by the engineering staff of Bond and Share of the properties which went to form Florida Power & Light Company? *A.* I made no appraisal of any properties that went to form it. I was connected with an appraisal made for the so-called Florida rate case in 1934, which was a partial appraisal of part of the property.

Q. The Miami rate case? *A.* The Miami rate case.

[*18269*] Mr. Calkins: Mr. Berman asked about the appraisal when Florida was formed.

The Witness: No, I said I had nothing to do with any of those appraisals.

Q. (by Mr. Berman): How about the properties of Carolina Power & Light Company when that company was reincorporating in 1926 after consolidation and merger of a number of companies, weren't you active in connection with that venture? A. My activities in connection with that venture were the construction of several of the hydro-electric plants, including the exploration of it and making cost estimates of the plants and letting contracts, the actual carrying out of the work. I had nothing to do with the financial interest.

Q. You did not prepare an appraisal which was calculated to justify the write-ups which took place on the books of the company at that time, is that right, Mr. Phillips? A. I never recollect making any such appraisal to justify anything.

Mr. Berman: Very well.

Q. (by Mr. Calkins): Mr. Phillips, will you state what experience you have had in the determination of the earning power of operating public utilities? [*18270*] A. My experience in the construction and valuation of utility properties and my experience in their physical operations, which I have described, which I described when I first appeared as a witness in these proceedings, and my other duties as general consulting engineer for the Bond and Share Service Company, have required me to become familiar with all aspects of the operations and businesses of these companies. My duties as general consulting engineer have also required me to make numerous special economic studies dealing with the problems and operations of these companies. These studies, in many instances, cover a determination of the earning power of the properties based upon prevailing and anticipated conditions.

Mr. Calkins: I would like to ask Mr. Berman if he would stipulate that so far as relevant here, Mr. Phillips has qualified prima facie as an appraisal witness to testify to the

value of physical properties and earning power of the companies in the American Power & Light System, and that any cross-examination of Mr. Phillips as to his qualifications be deferred until after the relevancy of this testimony has been passed upon by the Examiner and the Commission.

Mr. Berman: I won't stipulate that he is qualified. I will stipulate that at this point I am not making an objection to his testimony on the grounds of competency, re- [*18271*] serving my rights with respect thereto.

Mr. Calkins: That is satisfactory.

Q. (by Mr. Calkins): Mr. Phillips, have you recently made a study of the reproduction cost new less depreciation of the major properties in the American Power & Light System, and the earning power of such companies? *A.* I have.

Mr. Calkins: I ask that there be marked for identification as Respondents' Exhibit 329 a schedule entitled "Summary of Valuation of Properties of Subsidiaries of American Power & Light Company."

[Respondents' Exhibit 329 marked for identification.]

Mr. Calkins: I ask that there be marked for identification as Respondents' Exhibit 329-A a tabulation entitled "American Power & Light Company, comparison between fixed property account per books and per reproduction cost of new principal subsidiaries as of December 31, 1941."

[Respondents' Exhibit 329-A marked for identification.]

Mr. Calkins: I ask that there be marked for identification as Respondents' Exhibit 329-B, a series of schedules each bearing the name of various subsidiaries of American [*18272*] Power & Light Company, and the sub-heading: "Comparison between statement of fixed property and

capital structure as of December 31, 1939, as adjusted in a Commission exhibit—" which is identified on each particular sheet—"and statement of fixed property and capital structure adjusted on the basis of estimate of reproduction cost new, less depreciation value as of December 31, 1939, and December 31, 1940."

[Respondents' Exhibit 329-B marked for identification.]

Mr. Calkins: I ask that there be marked for identification as Respondents' Exhibit 329-C, a tabulation entitled "Value of investment account of American Power & Light Company in terms of reproduction cost new, less depreciation of the subsidiaries as of December 31, 1941."

[Respondents' Exhibit 329-C marked for identification.]

Q. (by Mr. Calkins): Mr. Phillips, as a result of the study to which you have referred, have you formed a considered opinion of the reproduction cost new, less depreciation values, or other present values as of December 31, 1941, of the physical assets of the properties of the operating public utility subsidiaries of American Power & Light Company? *A.* I have.

[*18273*] Mr. Berman: Mr. Examiner—

Mr. Calkins: I am just asking if he has formed an opinion.

The Witness: I have.

Mr. Berman: Mr. Examiner, may I interpose at this point to ask Mr. Calkins whether it is his purpose to have Mr. Phillips express his opinion as to the values of the properties of the subsidiaries of American Power & Light Company, and as to the value of the assets owned by American Power & Light Company?

Is that the purpose for which Mr. Phillips is being produced here?

Mr. Calkins: Yes.

Mr. Berman: Do I understand that in general Mr. Phillips' valuations are based on reproduction cost new, of the properties of the American subsidiaries, as indicated by the exhibits you have marked for identification?

Mr. Calkins: That is correct, as well as the fact that he will present certain earning power testimony which bears upon the value of the properties.

Mr. Berman: And will it be the gist of his testimony, as indicated by Respondents' Exhibit 329-C, to establish that the value of the assets owned by American Power & Light Company at the present time based on reproduction cost new, [18274] exceeds $315,000,000 in Mr. Phillips' opinion, as compared with the $251,000,000, approximately, at which these assets are carried on the books of American at the present time?

Mr. Calkins: Well, without anticipating the exact figures, Mr. Berman, that is generally the effect of what Mr. Phillips will propose to testify to. May I call attention, Mr. Berman, to the fact that all I am asking Mr. Phillips now is if he has formed an opinion. I will proceed with a couple of questions where I think if you want to make your objection that will be a little better place to do it, because here I am only asking him if he has formed an opinion.

Mr. Berman: All right, proceed.

Q. (by Mr. Calkins): Will you answer that? *A.* I did.

Q. Have these schedules which have been marked Respondents' Exhibits 329-A, B, and C, been prepared under your direction, and do they reflect the results of your study of the valuation of the physical properties of the operating public utility subsidiaries in the American Power & Light Company system? *A.* They do.

Q. Will you kindly state separately for each company, [18275] your opinion of the reproduction cost new, less depreciation or other value determined, based upon your study as to such values?

Mr. Berman: Well, Mr. Examiner, of course at this point I want to interpose to continue the questions I had undertaken a few minutes, ago, in order that I may ascertain the nature of the testimony which it is proposed Mr. Phillips will give.

Q. (by Mr. Berman): Mr. Phillips, is it a fact that you arrived in your studies at an estimate of some $315,000,000 for the assets of American Power & Light Company, that is, the investment portfolio of American Power & Light Company, as shown on Schedule 329-C for identification? *A.* Yes, it is the value of the American Power & Light Company's interest in its subsidiaries.

Q. And that is a sum considerably in excess of the amount at which American carries these assets on its books, is it not? *A.* I so understand.

Q. And then you further carried forward your figures to show that on that basis the common stock of American Power & Light Company would have an equity of some $76,349,000, did you not? *A.* Yes, sir.

[*18276*] *Q.* And all this was based on reproduction cost new, appraisals made by you? *A.* Made not entirely by me, by myself and other engineers.

Mr. Calkins: I think, Mr. Berman, that Respondents' Exhibit 329 indicates that there are certain properties in which the value was based upon a different basis, representing a small percentage of the total, but they are not all reproduction cost values.

Mr. Berman: But most of them are?

Mr. Calkins: That is true.

Q. (by Mr. Berman): And the testimony that you are now preparing to give, Mr. Phillips, is caculated to justify the totals we have mentioned, and to explain how you arrived at them, is that right? *A.* That is right, sir.

Mr. Berman: Mr. Examiner, at this point I am obliged to object to any further testimony on the part of Mr Phil-

lips with respect to the valuation of the assets of American Power & Light Company. This is a proceeding in which the issues are whether it is necessary to require the dissolution of American Power & Light Company and other sub-holding companies, in order [*18277*] to simplify the structure of the Electric Bond and Share System, and to fairly and equitably distribute voting power among the security holders of that system, irrespective of whether the assets of American are worth $1.00 or worth $1,000,000,000. The question merely is as to whether the statute requires the dissolution of this company, and in that regard testimony as to the value of the company's assets has no relevance here. The question has already been presented to the Commission in another proceeding under Section 11(b) (2), and the Commission in that decision, namely, in the matter of Commonwealth & Southern Corporation, file No. 59-20, squarely ruled that expert valuation testimony is not relevant to the issues raised in an 11(b) (2) proceeding, and that the Commission in that proceeding ordered valuation testimony excluded.

[*18278*] In the present case it seems to me that the Commission's ruling would be a fortiori, because of all the types of valuation testimony most objectionable and least competent, certainly valuation testimony based on reproduction cost new heads the list. Even if the testimony were not irrelevant to the issues in the proceeding, I maintain it would be wholly incompetent in this proceeding. For these reasons and in line with the Commission's decision with respect to this matter, I object to the admission of this testimony and ask that no further testimony of Mr. Phillips, or anyone else along the lines of valuation, be admitted.

Mr. Calkins: This valuation testimony, Mr. Examiner, is offered for two purposes. First, it is offered as rebuttal for redirect testimony of the respondents, and is directed

at certain exhibits prepared and introduced by the Commission. It is also offered in support of the plan of reorganization which has been offered here this morning and at the present time has not been admitted.

Mr. Berman: Well, of course—

Mr. Calkins: May I finish first? With respect to the Commission's Exhibits, Mr. Berman has introduced a number of exhibits and sought to develop testimony as to alleged excessive capitalization of these companies, and his exhibits purport to make certain adjustments in these [18279] capitalizations based upon what may be termed original cost. I would also like to call attention to the fact that in a number of cases these exhibits which purport to suggest adjustments are based upon reproduction cost appraisals, and Mr. Berman has offered them in evidence himself. For example, Exhibit 203, which is the income tax questionnaire exhibit relating to the Kansas Gas and Electric Company, and was used by Mr. Berman as the basis for the amount of the adjustment to be applied to the accounts of the Kansas company. It has been called to my attention that this income tax questionnaire was not used as the basis of adjustment as to the Kansas Company. However, it has been offered and is in evidence for what it is worth, and I would like to point out that the amounts shown in this depreciation questionnaire, particularly the item entitled "Investments, property contracted for but not yet completed, etc.," was based upon an appraisal by Paine, McClellan & Campion in 1917.

Exhibit 216, which is the income tax depreciation questionnaire of the Pacific Power & Light Company, the same item was based upon an appraisal by W. J. Hagenah in 1912.

Exhibits 300-A, B, and C, which was the depreciation questionnaire relating to the Central Arizona Light & Power Company, the item which I have referred to was

based upon an appraisal by appraisers appointed by the Arizona Corporation [*18280*] Commission and the Pacific Gas & Electric Company in 1912.

Exhibits 275, 278, and 278-A, which are the depreciation questionnaires relating to the Florida Power & Light Company, the item in question was based, in so far as it related to the gas properties, on an appraisal by Hagenah & Erickson in 1924.

Exhibits 310 and 311, which were reports of Internal Revenue agents relating to Montana Power Company, the item in question was based on several appraisals by W. J. Hagenah in 1913, and 1920.

In addition there has been received in evidence as Commission's Exhibit 890, an appraisal of the Water, Gas and Electric properties of Superior Light & Power Company, dated December 31, 1938, by Black & Veatch, engineers, in Kansas City. Now, I think on this record as it stands now with these exhibits, that Mr. Berman has put in, that we are entitled to show what the reproduction cost values or other present values of the properties of the subsidiaries are today.

Turning to the second point, while the plan has not been received in evidence, it has been offered, and I assume will be passed upon by the Commission as to whether it will be admitted in evidence here. I think it is clearly material and relevant in order to show the fairness and equity of this proposed plan, that we be permitted to introduce this valuation testimony.

[*18281*] Mr. Berman: Mr. Examiner, I ask that I be permitted to reply to some of the contentions made by Mr. Calkins. As will be noted from an examination of Mr. Calkins' statements, the various reproduction cost new appraisals which have found their way into the present record, all form part of the records of the respondents filed with the Internal Revenue Bureau. None of them were of-

fered by counsel for the Public Utilities Division to establish the value of respondents' properties. We placed in evidence the depreciation questionnaire replies filed by the respondents with the Treasury Department, to show what their depreciation base was, and to show the inflation in their properties, and because they had used the reproduction cost new appraisals at certain points pursuant to the regulations of the treasury department, where their records were missing and couldn't be found. Certainly, it doesn't mean that we thereby endorse and offer as our testimony those reproduction cost new depreciation studies. On the face of it that claim is nothing short of preposterous.

Mr. Calkins: May I make one more statement?

Mr. Berman: I am in the middle of mine.

Mr. Calkins: I am sorry.

The Examiner: Proceed.

Mr. Berman: As to the claim that this testimony is offered in rebuttal of Commission counsel's exhibits intended to [*18282*] show that the capitalization of the subsidiaries of American are inflated, it appears we are getting into a vicious circle there because the proceedings started out with counsel for the respondents offering in evidence various exhibits calculated to show substantial values for the common stocks of their subsidiaries. As cross examination and rebuttal, Commission counsel placed in evidence these exhibits which show the inflated capitalization based on book values and true historical costs, all made up in accordance with the various systems of accounts to which the respondents are subject. Namely, the System of Accounts of the Federal Power Commission and of the National Association of Utility and Railroad Commissioners. Now, Mr. Calkins says that the respondents have to come forward and to rebut the Commission counsel's rebuttal there is to be introduced evidence based on

reproduction cost new for the various properties, which is based upon no accepted system of accounts, and which has been thoroughly discredited throughout the courts of the land and before all competent regulatory bodies today. It seems to me unnecessary to argue the point any further since this very question has been squarely presented to the Commission in another proceeding and has been passed upon by the Commission. I take it Mr. Calkins is merely trying to save his record for the Commission.

[*18283*] So far as his desire to introduce testimony which he says will be relevant to the 11(e) plans, obviously he cannot do that at this time in this proceeding until he has persuaded the Commission to permit him to consolidate the 11(e) plans with the present proceedings, something which, I venture to predict, will not take place. At any rate, until it has taken place, such testimony which may be relevant to that proceeding cannot be received in this one.

Mr. Calkins: I don't intend to continue the argument any further, but I would like to point out that in addition to the income tax questionnaire, Mr. Berman himself put in the Black & Veatch appraisal.

Mr. Berman: I put it in to show valuation, as you very well know, Mr. Calkins. I put it in for certain admissions that it contained with respect to write-ups on the books of the company, and not to establish value.

Mr. Calkins: It is in as an exhibit.

The Examiner: All right.

Mr. Berman: I suppose if I put in an exhibit to show that an officer of the company wrote on a certain date, making certain admissions, that thereby I offer that officer as my witness for all purposes and I am bound by everything he ever said in his life, is that right?

Mr. Calkins: I don't want to get into any argument.

[*18284*] The Examiner: Never mind discussing those questions any further. It is not a question so much of logic,

or even of law in itself, but if the Commission has passed on the admissibility of such testimony it seems to me that it is up to you to ask the Commission to reconsider the point; and that I am bound by what the Commission has to say. Now, unless you want to brief for me the point, what the Commission has said on this point, and not what the courts should hold, I must sustain Mr. Berman's objection.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: Oh, yes. Off the record.

[Discussion off the record.]

Mr. Calkins: At this time I would like to make the following offer of proof.

The Examiner: All right.

Mr. Calkins: If Mr. Phillips were permitted to testify he would testify in detail as to the study which he has made as a basis for his opinion of the reproduction cost new, less depreciation or other values, and he would testify that in his opinion such values of the various companies were as follows:

Big Bend Transit Company, $439,655. Central Arizona Light & Power Company, $19,404,908.

Florida Power & Light Company, and subsidiaries, $91,365,752.

[*18285*] Kansas Gas & Electric Company, $41,572,585.

Minnesota Power & Light Company, $66,196,267.

The Montana Power Company, and subsidiaries, $141,203,088.

Nebraska Power Company, $39,631,758.

New Mexico Electric Service Company, $962,783.

Northern Power Company, $717,492.

Northwestern Electric Company, $21,631,799.

Pacific Power & Light Company, and subsidiaries, $47,132,699.

Portland Gas & Coke Company, $28,106,169.

Superior Water, Light & Power Company, $7,338,373.
Texas Electric Service, $53,173,307.
Texas Power & Light, $85,550,367.
Texas Public Utilities Corporation, $1,774,225.
Topeka Land Company, $331,222.
Utilities Land Company, $701,000.
Washington Irrigation and Development Company, $303,700.

The Washington Water Power Company, and subsidiaries, $94,317,495, or a total of $741,854,644.

I might add that in several cases, and particularly the case of Texas Electric Service, detailed valuations are in the course of preparation and may show values higher than those shown by Mr. Phillips' study.

Mr. Berman: Mr. Examiner, at this point I move to [*18286*] strike from the record Mr. Calkins' so-called offer of proof on the grounds that it constitutes an attempt under guise of an offer of proof, to embody in the record testimony and figures which the Examiner has already ruled are not admissible. If Mr. Calkins wants to make an offer of proof he has to make it in such manner that he doesn't thereby circumvent the ruling of the Examiner as to the admission of the evidence, which has already been excluded. His offer should be in general terms as to the nature of the testimony he wishes to offer, and not an attempt to read into the record the precise figures he intends to justify. I move, first of all, that the offer of proof be stricken from the record in the form in which it was made.

Mr. Calkins: I think, Mr. Examiner, that we are clearly entitled to have in the record in our offer of proof, not only the nature of the testimony, but, after all, the results of the testimony.

The Examiner: Objection overruled.

Mr. Berman: Will the record note my exception, please?

The Examiner: Yes.

Mr. Berman: I now move, Mr. Examiner, that Mr. Calkins' offer of proof be rejected in line with your previous ruling.

The Examiner: Sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

[18287] The Examiner: All right.

Mr. Calkins: At this time I would like to offer in evidence the tabulations which have been marked Respondents' Exhibits 329, 329-A, 329-B, and 329-C.

Mr. Berman: I, of course, object to the admission of those exhibits. It seems perfectly plain they cannot be admitted since they relate to the same matter concerning which the Examiner has refused the admission of testimony.

The Examiner: Anything further?

Mr. Calkins: No.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: At this time I would like to make an offer of proof to the effect that if Mr. Phillips were permitted to testify he would testify in detail as to the manner in which these exhibits were prepared; that they were based upon his valuation study, and that the values shown on such exhibits represent his opinion based upon his valuation study.

The Examiner: You offer to show that?

Mr. Calkins: I made that offer of proof.

Mr. Berman: I claim that the offer is irrelevant.

The Examiner: All right, objection sustained.

Mr. Calkins: I ask that an exception be reserved for [18288] action by the Commission.

The Examiner: All right.

Mr. Calkins: I would like to state on the record that the tabulations contained in Respondents' Exhibit 329-B for identification, includes certain figures which are taken from Respondents' Exhibits, the particular exhibits being noted on each tabulation. These figures, of course, are in the form in which the exhibits are at present and do not give any effect to any suggested corrections which we made yesterday.

Q. (by Mr. Calkins): Mr. Phillips, based on your study of the values of the physical properties, and giving effect to other assets and liabilities, have you formed a considered opinion as to the reproduction cost new, less depreciation value or other present values applicable to the bonds, preferred stocks and common stocks of these companies, and the proportion of such values applicable to the securities of such companies owned by American Power & Light? *A.* I have.

Mr. Berman: Obviously, Mr. Examiner. I must object to that question as being irrelevant and immaterial in the light of your ruling excluding testimony based on valuation evidence.

The Examiner: I will overrule that objection and let [*18289*] him say whether he formed an opinion.

Mr. Berman: It is irrelevant as to whether he has or not.

The Examiner: Let him say it, anyhow.

The Witness: I have.

Q. (by Mr. Calkins): Will you state such values applicable to the securities of each of such companies owned by American Power & Light Company?

Mr. Berman: I press my objection, Mr. Examiner.

The Examiner: Objection sustained.

Q. (by Mr. Calkins): I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: At this time I would like to make the following offer of proof:

If Mr. Phillips were permitted to testify he would testify that based upon his study to which he has referred, the reproduction cost values applicable to the holdings of American Power & Light Company and such companies were as follows:

Big Bend Transit Company, $439,655.

Central Arizona Light & Power Company, $10,531,004.

Florida Power & Light Company, $22,887,390.

[*18290*] Kansas Gas & Electric, $16,343,157.

Minnesota Power & Light Company, $18,463,635.

The Montana Power Company, and subsidiaries, $74-362,829.

Nebraska Power Company, $11,527,540.

New Mexico Electric Service, $905,061.

Northern Power Company, $712,666.

Northwestern Electric Company, $10,033,715.

Pacific Power & Light Company, and subsidiaries, $20,-440,367.

Portland Gas & Coke Company, $9,035,000.

Superior Water, Light & Power Company, $6,311,519.

Texas Electric Service Company, $13,814,762.

Texas Power & Light Company, $33,322,060.

Texas Public Utilities Corporation, $1,765,364.

Topeka Land Company, $323,469.

Utilities Land Company, $716,828.

Washington Irrigation Development Company, $343,173.

The Washington Water Power Company, and subsidiaries, $63,233,169; a total of $315,502,363.

Mr. Berman: I move to strike Mr. Calkins' offer of proof because of the form in which it was made, based on similar objections made with respect to his previous offer of proof.

[*18291*] The Examiner: Motion denied.

Mr. Berman: I take an exception. I now move that Mr. Calkins' offer of proof be denied.

The Examiner: Objection sustained.

Mr. Calkins: I ask that exception be reserved for action by the Commission.

The Examiner: All right.

Q. (by Mr. Calkins): Mr. Phillips, have you also carried your study forward by substituting for the investment account of American Power & Light Company, as shown by its books, the reproduction cost values applicable to the bonds, preferred stocks, and common stocks of these companies which are owned by American Power & Light Company, and thus determined the value on a reproduction cost basis applicable to the debt, preferred stock, and common stock of American Power & Light Company?

Mr. Berman: Objected to as irrelevant.

Mr. Calkins: I ask him if he had carried his study forward.

Mr. Berman: It is of no interest as to whether he has or not, since clearly his opinion cannot be admitted here.

The Examiner: I will let him say whether he has formed an opinion.

The Witness: I have.

[*18292*] *Q.* (by Mr. Calkins): Will you state the reproduction cost values shown by your study, which is applicable to the debt, preferred stock, common stock of American Power & Light Company?

Mr. Berman: Objected to as inadmissible.

The Examiner: Objection sustained.

Mr. Calkins: I ask that exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: At this time I would like to make the following offer of proof. If Mr. Phillips were permitted to testify he would testify that the reproduction cost values

applicable to the securities of American Power & Light Company which are outstanding and are as follows: American's interest in the subsidiaries on a reproduction cost basis substituted for its investment account, $315,502,363, to which should be added cash and cash items $9,733,795. United States, State, Municipal and other securities, $8,723,425. The difference between current assets and other debit items and current liabilities, $499,337, a total of $334,458,920. Applying these values to the security of American they would be applicable to the long-term debt $45,849,000; applicable to the preferred stock $177,145,326; applicable [*18293*] to preferred stock dividend arrearages $35,114,788, and the remainder for common stock of American Power & Light Company, $76,349,806.

The Examiner: The offer is made.

Mr. Berman: I move to strike the offer of proof from the record because of the form in which it was made on the grounds previously stated for the prior offers.

The Examiner: Overruled.

Mr. Berman: I take an exception. I now move that the offer of proof be denied.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: At this time I would like to offer as Respondents' Commission 329-C the tabulation which has been marked Exhibit 329-C for identification.

Mr. Berman: I object to its admission on the grounds previously urged with respect to the other exhibits.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: I would now like to make an offer of [*18294*]

proof to the effect that if Mr. Phillips were permitted to testify that he would testify this exhibit was prepared under his direction; that the values shown on the exhibit were determined as the result of his study and that the exhibit represents his opinion as to the matters indicated.

Mr. Berman: Mr. Phillips has already testified to that. He already testified that he prepared them and they represent the results of his study, and they represent his opinion.

Mr. Calkins: My statement goes further than that, Mr. Berman.

The Examiner: Off the record.

[Discussion off the record.]

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Q. (by Mr. Calkins): Mr. Phillips, turning to the earning power section of your study, will you describe briefly the basis upon which it was made?

Mr. Berman: I object, Mr. Examiner, on the ground that this is further valuation testimony which is not admissible in this proceeding in line with the ruling of the Commission [*18295*] in the Commonwealth & Southern Corporation proceeding.

The Examiner: Objection sustained.

Mr. Calkins: Mr. Examiner, I am not asking him any figures, I am merely attempting to explain the study and how it was prepared.

Mr. Berman: Why waste time since it is not admissible?

The Examiner: Off the record.

[Discussion off the record.]

Mr. Calkins: Mr. Examiner, I would like to point out that Mr. Phillips' study is based upon two parts, first, its reproduction cost values; secondly, it is the earning power

of subsidiaries. They say you can not use reproduction cost. What about earning power? That is what we are going to show now, and what I am doing is explaining the study which Mr. Phillips made so that anyone looking at the exhibits will have a proper understanding as to how these exhibits were prepared. I am not asking him any figures.

The Examiner: The Commission will not look at the exhibits unless you persuade the Commission to take a different position from what it has taken in previous cases.

[*18296*] Mr. Berman: The Commission did not exclude testimony in the Commonwealth & Southern Corporation case merely on the grounds that it was reproduction new testimony. In fact, I am not sure that it was in that case. It excluded it on the grounds that valuation testimony, whether based on earnings or anything else, is irrelevant. I merely added that where it is based on reproduction cost new, it is incompetent as well as irrelevant. Where it is based on earning power, it is still valuation testimony and it is still inadmissible.

Mr. Calkins: May I suggest this is not valuation testimony.

Mr. Berman: What is it? Statistics as to earnings?

Mr. Calkins: Testimony as to the probable earning power of these companies.

Mr. Berman: What do you call that if not valuation testimony?

Mr. Calkins: It is only the testimony as to earnings to be used in considering the value of the securities. I think there is quite a difference.

Mr. Berman: I think you are playing with words. Obviously, you are trying to introduce testimony as to the earning power of these companies as bearing on their value to American Power & Light Company, and if that is not [*18297*] valuation testimony, I don't know what it is.

Mr. Calkins: Mr. Examiner, I insist this is not valuation testimony, and that there should be a distinction drawn between testimony of this nature and what I have previously offered.

Mr. Berman: May I ask what is the alleged relevance of these statistics you want Mr. Phillips to give as to his opinion of what these companies make here? What is its relevance in this proceeding?

Mr. Calkins: I thought the Commission and the Commission staff contended the earning power was the one criterion to be considered in determining the value of securities of a public utility.

Mr. Berman: The one to be considered in determining the value of securities of a public utility, and a moment ago you were saying this was not valuation testimony. I am at a loss to understand your point.

Mr. Calkins: I am merely putting before the Commission or attempting to put before the Commission, figures with respect to the earning power upon which the Commission may make a determination as to the values.

Mr. Berman: The Commission has no occasion to make a determination of values in the present proceeding. The respondents, if they want to try to reorganize their companies, [*18298*] have to obtain the permission of the Commission to permit proof to be adduced as to their 11(e) plan or some other reorganization plan. The Commission is not interested in the present proceeding, as it has indicated in a similar proceeding, with the entire question of valuation.

Mr. Calkins: Mr. Examiner, this proposed testimony is directed to the plan which has been offered this morning.

Mr. Berman: The plan has been refused admission. Therefore, the testimony must be refused admission.

The Examiner: The objection was sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Berman: At this time I make the following offer of proof. If Mr. Phillips were permitted to testify he would testify in detail as to the manner in which he made his study of the earning power of the various subsidiaries in the American Power & Light Company system, and the amount of the earnings of such companies available to the securities owned by American Power & Light Company. I offer to prove that based on Mr. Phillips' study he would testify that the income available to American Power & Light Company from its subsidiaries on the basis of actual revenues and expenses for 1937 through 1941, by giving [*18299*] effect to conditions prevailing December 31, 1941, and based on Federal income tax rates prevailing in 1938 and 1939, would have been as follows: For the year 1937 the amount available to American would have been $13,889,498—

Mr. Berman: May I interpose; what is the basis of this testimony?

Mr. Calkins: I am making an offer of proof.

Mr. Berman: I would just like to understand what the proof is calculated to show, that if income taxes were now what they were four years ago, something else would follow? I would just like to get clear on it as you go along. Will you enlighten me on that subject?

Mr. Calkins: I will let you read this. You evidently were not listening to what I stated on the record.

Mr. Berman: Well, I did catch some strange word. Proceed, Mr. Calkins. I am not sure that I understand even what it is that Mr. Phillips would attempt to prove, but I think you might as well make your offer.

Mr. Calkins: May I suggest that I try to have Mr. Phillips explain on the record just the kind of a study he made, but that the testimony was not permitted to be introduced?

Mr. Berman: That is perfectly true because it has no [*18300*] relevancy.

Mr. Calkins: 1938, $12,424,965; 1939, $14,210,455; 1940, $15,985,677; 1941, $18,140,916; or a total of $74,651,511, to which should be added other income of $375,000, or a total of $75,026,511. And that after provision for interest for your preferred stock dividends, operating expenses and taxes of American Power & Light Company, there would be available for the common stock and other corporate purposes of American Power and Light Company for the 5-year period 1937 to 1941, $9,873,361.

Mr. Berman: I move to strike the offer on the ground that its form is improper; on the ground that I can think of nothing better calculated to confuse the record.

The Examiner: Objection overruled.

Mr. Berman: I move that the offer be denied.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: I ask to have marked for identification as Respondents' Exhibit 330, a series of schedules, the first of which is entitled "Earning Power of Subsidiaries of American Power & Light Company as it relates to American Power & Light Company situation," to which is attached a [*18301*] number of supporting schedules.

[Respondents' Exhibit 330 marked for identification.]

Q. (by Mr. Calkins): Mr. Phillips, does this series of schedules which has been marked Respondents' Exhibit 330 for identification, was it prepared under your direction and does it show the results of your study as to the earning power of the various companies in the American Power & Light Company system and the amount of earn-

ings available to American Power & Light Company? A. It does.

[18302] Mr. Calkins: I offer this series of schedules in evidence as Respondents' Exhibit 330.

Mr. Berman: Mr. Phillips, are you an accountant?

The Witness: Not by profession. I have had a great deal of experience in accounting.

Mr. Berman: Have you ever been employed as a financial analyst?

Mr. Calkins: I thought you weren't going to object to his qualifications.

Mr. Berman: I thought he was to testify as an engineer concerning reproduction cost new. Now, it turns out that he is a financial analyst who can analyze earnings and produce expert testimony as to adjusted earnings and readjusted earnings, et cetera, of the entire American Power & Light system. However, I will not press that objection in view of the fact that I, of course, object to the admission of this exhibit on the grounds that it is entirely irrelevant to the issues in this proceeding.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for action by the Commission.

The Examiner: All right.

Mr. Calkins: At this time I will make the following [18303] offer of proof. If Mr. Phillips were permitted to testify he would testify in detail as to his earning power study, and that this series of schedules, which has been marked Respondents' Exhibit 330, was based upon his study of the earning power, and that the figures set forth therein represent his opinion as to such earning power.

Mr. Berman: These offers of proof are getting somewhat cumulative.

The Examiner: Do you object?

Mr. Berman: Yes, sir.

The Examiner: Objection sustained.

Mr. Calkins: I ask that an exception be reserved for ruling by the Commission.

The Examiner: All right.

Mr. Calkins: As shown by Respondents' Exhibit 329 for identification, Mr. Phillips accepted for the purpose of his study certain appraisals of other engineers and the respondents are prepared to produce the following engineers who made the appraisals for the following companies, to testify in detail in support of their appraisals. Benjamin L. Smith representing Whitman, Requardt and Smith, who made an appraisal of the properties of Central Arizona Light & Power Company. Cecil F. Elmes, who made an appraisal of the going value of Florida Power & Light [*18304*] Company. Harry Street, assistant first engineer of the Florida Power & Light Company, who made an appraisal of the water property in Coral Gables, Florida, owned by a subsidiary of the Florida Power & Light Company. Douglas C. Black, a valuation engineer of Minnesota Power & Light Company, who made an appraisal of the properties of that company. Ralph E. Davis, who made an estimate of the present value of oil and gas reserves of subsidiaries of the Montana Power Company. Nathan Thomas Veatch, Jr., representing Black & Veatch, who made appraisals of the properties of Nebraska Power Company, Northern Power Company and Superior Water, Light & Power Company. Louis R. Howson, representing Alvord, Burdick & Howson, who made an appraisal of the properties of the Washington Water Power Company. T. D. Thomas, who made an appraisal of the properties of New Mexico Electric Service Company. Ernest C. Willard, who made an appraisal of the properties of Northwestern Electric Company, Pacific Power & Light Company and Portland Gas & Coke Company. At this time I would like to ask Mr. Berman if he will stipulate that these

engineers whom I have named would, if present, qualify prima facie as appraisal witnesses, and would offer to present detailed testimony in support of [*18305*] their appraisals of the respective companies whose properties were appraised by them, in accordance with the amounts incorporated in the exhibits which have been marked 329, 329-A, B and C for identification; and to stipulate that if these witnesses were present and were presented as witnesses, the same rulings would be made by the Examiner as to the relevancy of the valuation testimony offered by them, as was made with respect to the proposed testimony of Mr. Phillips; and that respondent's counsel might reserve an exception for action by the Commission, and that respondent's counsel may make appropriate offers of proof with the same effect as though these witnesses had been present at the hearings and asked the necessary questions to present their issue as to the relevancy of their testimony.

Mr. Berman: I am willing to stipulate that the absence of these engineers should in no way be detrimental to the respondents. That was the purpose of our arrangement, and accordingly I am willing to have the record indicate that if these gentlemen had appeared they would have sought to give testimony along the lines indicated by Mr. Phillips, and incorpoated in his schedules. I hope that the Examiner would have made the same ruling with respect to that testimony, and its irrelevancy [*18306*] and incompetence, as he did to Mr. Phillips.

Mr. Calkins: And that I might be considered to have the same exceptions?

Mr. Berman: As far as I am concerned it may be so indicated.

Mr. Calkins: For the purpose of the record I would like to make a formal offer of proof that if these witnesses whom I have named were permitted to testify with respect

to the appraisals which they have made as to these companies, they would testify in detail as to the manner in which they made these appraisals and that as a result of their appraisals they had reached a determination of the reproduction cost accepted by Mr. Phillips, and incorporated in his exhibits.

Mr. Berman: All of them use reproduction cost as the basis of their appraisal, is that right, Mr. Calkins?

Mr. Calkins: That is my understanding, Mr. Berman.

Mr. Berman: I object to the receipt of the offer.

The Examiner: Objection sustained.

Mr. Calkins: May I have an exception reserved for ruling by the Commission?

The Examiner: All right.

* * * * * *

[*18324*] Mr. Berman: Will counsel stipulate that where the record contains filings made by the respondents with this Commission, and where subsequent filings have been made by the respondents, that the subsequent filings can be referred to with the same force and effect as though they had been formerly received in evidence in this proceeding?

Mr. MacLane: That refers principally, although not [*18325*] exclusively, to the U-5-S's for 1940 and 1941?

Mr. Berman: That is the type of thing I had in mind, Judge.

Mr. MacLane: Yes, subject to the proviso that the source of any such material shall be identified and the material so identified shall become a part of the record, if any review is had.

Mr. Berman: That is agreeable. And, can we also stipulate that with regard to minute books of the various respondent companies and transcripts of ledger accounts, all of which are bulky and voluminous, that figures or statements contained therein may be referred to by either side,

and that any such material thus referred to shall be identified and become part of the record for the purposes of review?

Mr. MacLane: Yes, that, of course, Mr. Berman, covers the formal filings which the companies have made in accordance with the specific requirement of the law or some specific order of the Commission?

Mr. Berman: No, I had in mind now, Judge, the fact that we have received statistics of the minute books of all the companies which are very huge and voluminous, and which I have not sought to introduce in evidence here. I want to arrange that either of us can refer to them for any particular fact or statement by making it part of the record in the manner prescribed.

[*18326*] Mr. MacLane: But, those are the papers which have been furnished by this respondent subject to your request, and the papers which respondent is responsible for.

Mr. Berman: All of them are the documents furnished by this and the other respondents. I wanted the stipulation to cover the minute books of Electric Bond and Share and investment ledger of—

Mr. MacLane: I should have said respondents in this case.

Mr. Berman: Is that agreeable, Judge?

Mr. MacLane: Yes, that is all right.

Mr. Berman: Do I understand that you have another witness at this point?

Mr. MacLane: Yes, sir.

Mr. Berman: May we have just a minute's recess before Mr. Aller goes ahead?

The Examiner: Yes, all right.

[Short recess.]

H. L. ALLER,

recalled as a witness on behalf of the respondent, having been previously sworn, testified further as follows:

Direct Examination by Mr. MACLANE:

Q. Mr. Aller, you have given your name to the reporter? *A.* Yes, sir.

Q. You have been previously sworn and have testified [*18327*] in this case? A. Yes, sir.

Q. And you are the president of the American Power & Light Company? *A.* Yes, sir.

Q. There has been identified here the Respondents' Exhibit for identification No. 326, a document entitled "Motion to consolidate in the matter of American Power & Light Company, applicant, File No. 54-37, and in the matter of Electric Bond and Share Company, American Power & Light Company, and other companies, File No. 59-12" having attached thereto as exhibits an application under Section 11(e) of the Public Utility Holding Company Act of 1935, by American Power & Light Company, for approval of a plan of compliance with Section 11 of the Act, and of the plan itself, proposed by American, and the company schedules and exhibits. Are you familiar with this document? A. I am.

Mr. MacLane: I believe it is stipulated, or I think Mr. Berman will stipulate, that that document was filed in this proceeding on the 6th day of December, 1941, as identified by a receipt signed by Mr. James Hindle, Chief of the Docket Section.

Mr. Berman: I will acknowledge, Judge, that it [*18328*] was filed with the Commission at that time. I don't know whether it can be said to have been filed in this proceeding.

Mr. MacLane: Will you admit the authenticity of that or do you want me to bring in Mr. Hindle?

Mr. Berman: I will admit it, Judge.

Mr. MacLane: I will ask that there be identified as Respondents' Exhibit No. 326-A, a copy of receipt by Mr. Hindle, Chief of the Docket Section, acknowledging the filing of this motion.

Mr. Berman: I object to the receipt of the—

Mr. MacLane: I have not offered it, I have asked that it be identified.

Mr. Berman: No objection.

[Respondents' Exhibit No. 326-A marked for identification.]

Mr. MacLane: I show this document to Mr. Berman, and ask whether he will agree without my calling Mr. Hindle, that this is a true copy of the receipt, and may be offered with the same force and effect as though it were the original.

Mr. Berman: Judge, I will do more than that, I will obviate the necessity of your offering the document at all by admitting that the motion was filed with the Commission, as I already have admitted.

Mr. MacLane: Would you kindly answer my question, Mr. [*18329*] Berman, I asked you whether you will admit the authenticity of this document?

Mr. Berman: I raise no question as to the existence or the authenticity of Mr. Hindle's signature, Judge.

Mr. MacLane: Will you agree that this is a copy of the document?

Mr. Berman: I don't dispute it for a moment.

Mr. MacLane: Will you agree that this is a copy of the document?

Mr. Berman: I don't dispute it for a moment.

Mr. MacLane: Accepting that as an agreement, I offer this document in evidence as Exhibit No. 326-A, and it is to meet the point which Mr. Berman seems unwilling to

admit, that this matter has been filed in No. 59-12, which is this proceeding.

Mr. Berman: No objection to the admission of this document.

The Examiner: Admitted.

[Respondents' Exhibit 326-A received in evidence.]

Mr. MacLane: Now, I wish to renew the offer of Exhibit No. 326 for identification, which was made this morning, and which I understand was rejected. I wish to call attention to the fact in this connection, that every document filed [*18330*] in this proceeding, including the original notice and order, and every document filed subsequent thereto, has been received in evidence and given an exhibit number. I do not assume that that was necessary, but, however, it is the practice here and I therefore request, and with such vigor as I have, insist that this document be received in evidence.

Mr. Berman: Mr. Examiner, if it makes any difference to anybody, I have no objection to its coming in.

The Examiner: Admitted.

[Respondents' Exhibit 326 received in evidence.]

Q. (by Mr. MacLane): Mr. Aller, I symbolically hand you this exhibit number, Respondents' 326, and will ask you to state if you recall on what day the plan which is attached to that exhibit, and the application for its approval, was filed with this Commission? *A.* It was filed on July 23, 1941.

Q. Will you state the origin of this plan? *A.* The plan originated following discussions between myself and counsel John F. MacLane during the course of my cross-examination in this proceeding in March, 1941. At that time we discussed the matter generally, and finally [*18331*] formulated the substance of a plan which I requested counsel to set forth in such shape so that we could present it to our board of directors. This counsel did.

Q. I hand you herewith Exhibit No. 327-A of the respondents, introduced into evidence this morning, which purports to be a certified copy of excerpts from minutes of the board of directors' meeting held on April 23, 1941. Was that the first meeting at which the substance of this plan was discussed with the directors? A. Yes.

Q. Do those minutes set forth with substantial accuracy the substance of the action which was taken at that time? A. Yes, they do. Of course, counsel explained the purposes, intent and details of the plan as then proposed, and there were a number of questions asked by members of the board, and there was a general agreement reached as to the lines which the plan should follow. Counsel was then instructed to go ahead and polish the document up.

Mr. Berman: Well, Mr. Examiner, I have hesitated to interpose objection to this line of testimony, merely in an effort to find out where it was going. But, it seems to me to be of the utmost irrelevance to this proceeding, and I [18332] move to strike the entire line of questioning and the answers with regard thereto. In other words, I cannot see what difference it makes to us here why Mr. Aller decided to file a plan and how he and his directors went about the drafting of it; what they said to counsel and counsel said to them. What is the significance of that?

Mr. MacLane: Well, Mr. Examiner, I may say, in response, first, that this testimony will be very brief. It will take very much less time to offer than it will to go through the formality of making offers of proof, and so forth. And, it would seem to me that it would be perfectly proper for counsel to state his objection and move to strike the testimony and let the Commission decide whether it had any relevance or not, at the proper time. But, passing that for the moment, which suggestion counsel may adopt, or not, as he sees fit, I want to call attention to two phases of this question. The first is that it is, and will be the contention

of this respondent, which is for the Commission to decide and cannot be decided here, that this plan is directly responsive to the issues tendered in this proceeding, whether motions to consolidate were ever made, or not. In other words, the issues as defined by the notice and [*18333*] order here, are simply whether the corporate existence of American Power and Light Company should be terminated. One answer is, and a perfectly good answer, that it is not necessary to terminate the corporate existence of American because it not only can be reorganized, but has proposed that it be reorganized to conform to this law. So that the reasons, if any, for the termination of its corporate existence, would not longer exist. Second, there has been filed here and just admitted in evidence, this motion to consolidate. This motion to consolidate is pending before the Commission. It has not been set for hearing. I understand that Mr. Berman stated this morning that an agreement had been reached by which the matter would be tendered to the Commission. That is correct, isn't it, Mr. Berman?

Mr. Berman: Yes.

Mr. MacLane: Therefore, this very brief testimony which will not take over fifteen minutes, is pertinent and should be of some assistance to the Commission in the determination of this motion. As to all, counsel's rights of objection may be preserved in the manner that I suggest, and I submit if there is any doubt in your mind as to the relevancy of this testimony, that doubt should be resolved in favor of admitting it.

[*18334*] Mr. Berman: Mr. Examiner, all that the Judge has said seems to me to simmer down to the fact that he thinks a legal argument can be made, that because the respondents have filed a plan to reorganize American, therefore it is no longer necessary to order the dissolution of American. Perhaps there is force to that argument and perhaps there is not. As Judge MacLane knows, I think

there is none whatever. But, we are not to argue it out here. That is a matter for the Commission to decide. I don't think that it is a subject for the taking of testimony. I have no desire to constrain the Judge unduly, and if you decide to grant his request to permit this statement to come on the record, I think it should be with the understanding that it is in the nature of preliminary argument on the motion to consolidate or some such thing, and not in the nature of evidence; and that I have taken a running exception to his entire line of testimony.

The Examiner: Off the record.

[Discussion off the record.]

The Examiner: All right.

Q. (by Mr. MacLane): I hand you Respondents' Exhibit No. 327-B, which was admitted in evidence this morning, which purports to be a certified copy of the minutes of the meeting of the board of [*18335*] directors of American, on June 25, 1941. Can you identify it as such? A. Yes.

Q. Does that correctly represent, according to your recollection, the action taken at that meeting? A. It does.

Q. While it is probably not important, I notice that that was the June meeting. You hold a monthly meeting, do you not? A. Yes.

Q. Why was there no further presentation of the matter in May? A. Well, I was in the Northwest for about a month, and was there during the time of the regular May meeting. And, during that time there was some further revisions being made to the proposed plan. I recall having talked on long distance to counsel about it during my absence. The plan was not ready for submissi to the board until about the time of my return, which was just prior to the date of the June meeting. Therefore, the plan was not considered at the May meeting.

Q. I note by these minutes that a committee was appointed consisting of Messrs. Frost, Ericson and Bauer, to

consider the plan in detail. Can you describe those [*18336*] gentlemen very briefly with particular reference to whether they had any contacts with Electric Bond and Share Company system other than as directors of American? *A.* All three of them were directors of American and had been for some years. They had no connection whatever with the Electric Bond and Share Company and were not affiliated with it in any way, and never had been. Mr. Frost was, and still is, a partner in W. A. & A. N. White & Company, of New York, and he and his associated interests own 41,450 shares of $6 preferred stock; $5,500 principal amount of debentures, and he personally owns 100 shares of common stock and 100 shares of the $6 preferred stock. Mr. Ericson is the president of the S. W. Childs Management Corporation. His associated interests have large holdings in American. They own 11,000 shares of common stock; 5,000 shares of $6.00 preferred stock; 625 shares of $5.00 stock, and $345,000 principal amount of debentures. Mr. Bauer is a retired investment banker. He has relatively small holdings, all of common stock, owning 100 shares of common stock. He is at the present time connected with the War Production Board in Washington. But, none of these gentlemen had had any affiliation whatever with Electric Bond and Share Company, and they [*18337*] were selected by the board to review the proposed plan as set forth in those minutes.

Q. Did they carry out that direction? *A.* Yes, they conferred with each other, discussed the matter with me, and I understand took the matter up with counsel and reported favorably on the matter at the next meeting of the board.

Q. I hand you herewith what purports to be a certified copy of the minutes of the meeting of the directors of American, held July 23, 1941, which has been introduced in evidence as Respondents' Exhibit 327-C. Does that cor-

rectly reflect the action taken in that meeting? *A.* Yes, it does.

Q. That meeting was held on July 23, which was the day of filing of the plan. How was that accomplished, the meeting being in New York and the filing taking place in Washington? *A.* Immediately following the meeting, which was about 12:30, I think, when the meeting adjourned, a messenger was dispatched to Washington by plane to file the plan.

Q. Why the hurry? *A.* It was felt by the board that it would be unjust to stockholders to have such an important matter reach them through the channels of rumor or through the press, and that it would be highly desirable to send a notice to [*18338*] stockholders immediately following the action of the board. Of course, we couldn't send such a notice without the plan having been filed. The letter addressed to stockholders was ready for mailing and was released immediately after the filing of the document. It was in order to protect stockholders in their interest, to give them as prompt notices as possible, that that document was filed the same day the action was taken by the board.

Q. By the way, had the directors, that is, all members of the board, received copies of the final draft of the plan as agreed upon between the committee and yourselves, any substantial time before the meeting of July 23rd? *A.* Yes, sir, between the meeting of June 25th and July 23rd, as soon as the agreement had been reached by the committee and the plan finally typed up, the copy in typed form was furnished to all the directors several days before the meeting at which action was taken.

Q. Now, there are two or three questions about the plan itself I want to ask you which are, perhaps, not apparent on the face of the plan. Why does the plan not specifically designate the single integrated system which it was pro-

posed should be retained by American Power & Light Company? A. There were two reasons for this which seemed [18339] important at the time. In the first place, at that time it was my understanding, and I had been informed by counsel, that there had been no orders or opinions handed down by the Securities and Exchange Commission sufficiently clarifying the questions that had been raised concerning the interpretation of Section 11(b). There had been advanced many interpretations of that section, and it was subsequent to the filing of this plan that the Commission handed down its first order which gave to us an idea of what properties we might be expected to retain with the approval of the Commission. That order was the Engineers Public Service Company order. They went in great detail into the question of the second system, and the incidental properties that might be owned. And the question as to whether the second or additional systems must of necessity be in a State adjoining the principal system or whether they could be in other parts of the country, disassociated from that central system. Then the second reason was that American has a number of properties which are situated in the proximity of Federal projects where substantial movement is on foot directed toward public ownership of utilities. It was not certain at that time just how far this movement would go in these sections, and it was felt desirable that no definite [18340] action be taken by American on that point until the matter developed further. It was, of course, contemplated that provided it was determined by the Commission that American had the right to select its own system or if counsel felt that American had the undisputed right to select its own system, or if the Commission desired American to select its own system, American would, by amendment to the plan, make such an election at the proper time.

Q. The primary reason, then, for not making the elec-

tion at that time, was to keep the plan sufficiently flexible to await the determination of some of these disputed issues? *A.* That is correct.

Q. The plan does not propose any specific recapitalization or distribution of stock between the present five and six dollar preferred and the common. Why was no definite provision made for that? *A.* It was felt by the directors that they should not attempt in the first instance, or at least not at that time, to make such a determination. It was felt that inasmuch as the Commission had the power and right to adjudicate the matter in the final analysis, that the Commission might, in the first instance, indicate what it considered to be a [*18341*] proper apportionment of values between these various classes of stock. It was felt that inasmuch as this was to be a voluntary plan it would require substantial support on the part of the various classes of stockholders, some 90 per cent, I believe, of the preferred stock, and 50 per cent of the common stock would have to agree to the plan. It was therefore felt that it would be desirable to have large groups of these stockholders, or stockholders representing a large amount of stock, at least, agree as to some proper distribution of the reclassified stock among the various classes of stockholders of American. It was, of course, felt that if the directors should at that time propose a definity of allocation of values between the various classes of stock, that attention would be focused on that particular matter and controversy would arise with respect to it and detract from the merits of the plan as a whole. It was therefore felt desirable that the plan be not definite in that respect at that particular time.

Q. Would it be your intention that that matter should also be fixed by amendment to the plan at the proper time? *A.* Yes, it is our intention that that would be covered by an amendment to the plan and that the values which would

[18342] be fixed in such amendment would be determined in some one of the manners that I have indicated above.

Q. Do you regard this reclassification of stock as essential to any reorganization of American, or even to its dissolution? *A.* Yes, I regard it as highly essential. If American Power & Light Company is to be either reorganized or dissolved, the reclassification of stock will permit American to distribute values without wasting of those values, as would result if it were compelled to liquidate through a substantial sale of properties. It was felt that the sale of properties should be limited to as small an amount as necessary to facilitate the satisfaction of the debt of American.

Q. Was that particularly true in view of the present unsettled economic and other conditions? *A.* Yes. The war condition has made the markets for securities and common stocks, much poorer than it was even at the time when the plan was filed. But, it was felt that the conditions were such even in 1941 that great values would be lost unless some such plan of reclassification of stock were followed out.

Q. What means do you and the directors have in mind for satisfying American's debt, as represented by the out-
[18343] standing debentures? *A.* American has in its portfolio some ten and a half million dollars of debentures of the Montana Power Company. It has some two and a half million dollars of debentures of the Northwest Electric Company, and $5,000,000 of bonds of the Texas Power & Light Company. All of these securities would be salable at a good price today, in my opinion. It has, in addition to that, some $15,000,000 cash and certain properties which would not be a part of the integrated systems, could be sold, and sufficient proceeds obtained to retire the full debt of American.

Q. The amount of that full debt is somewhere around $47,000,000? A. That is correct.

Q. What would be the effect of the adoption of the plan under the relations of American to Electric Bond and Share and its system? A. Electric Bond and Share Company, upon the reclassification of the stock, would be affected. It would undoubtedly have its voting proportionate strength reduced. Electric Bond and Share Company owns approximately 3 per cent of the preferred stock of American, and about 30 per cent of the common stock.

Q. Pardon me, 20 per cent, isn't it? [*18344*] A. 30 per cent.

Mr. Berman: 30 per cent is right.

The Witness: 30 per cent.

Q. (by Mr. MacLane): Oh, that produces about 20 voting? A. 20 voting. If the stock is to be reclassified as proposed in the plan, and the arrearages of the preferred stock are to participate, then on undoubtedly the preferred stock will have voting control after such reclassification. Electric Bond and Share Company, as stated, has but a small percentage of the preferred stock. Whether Electric Bond and Share Company would continue to be a holding company or an affiliate of American Power & Light Company, supposing the reclassification of stock, of course, would depend upon the quantitative amount of stock issued to Electric Bond and Share under this plan. The disposition of the holdings of Electric Bond and Share Company, of course, is a matter which would be a problem for the Securities and Exchange Commission, not a problem of American Power and Light Company.

Mr. MacLane: If Mr. Berman, particularly, will bear with me, this is my last question.

Q. (by Mr. MacLane): I do not want to go into any length in the [*18345*] question of economic justification of the plan, that is a matter, I think, for later determination.

[18346] But, I believe the plan sets forth about four integrated systems, or what are claimed to be integrated systems, which consist of more than one company. Those would be the Northwestern, the Texas, the Kansas-Nebraska, and the Minnesota-Superior groups. Do you believe the view expressed in the plan that those properties are so integrated, if I may use the term, in their operations that they should be kept together by some form of corporate connection after the application of this act to American? *A.* It seems to me highly desirable that the properties in the Northwest remain under one control, and the same thing applies to the properties in Texas. Likewise, the Minnesota and Superior companies are so interconnected in their operations and the economy of their operation is so interwoven, that it is highly desirable they remain under one control and ownership. The Nebraska-Kansas situation is exactly the same. Those companies are inter-connected and substantial economies flow from a continuance of their close relationship, as exists under a common ownership.

Q. And regardless of what the name of the company was which kept these different groups together, you believe that those four groups should severally each be kept together [18347] as integrated systems? *A.* I think that they each should be in a system. And I assume that you mean by "the name" that irrespective of whether they are retained by American in any particular instance, that they should be continued in a group, and that is so.

Mr. MacLane: That is all, thank you.

Mr. Berman: Mr. Examiner, at this time in line with my other statements, I move to strike Mr. Aller's entire testimony as irrelevant, and in no sense evidence in the case, and only self-serving statements of one kind or another.

Mr. MacLane: I suggest that motion be reserved for action of the Commission.

Mr. Berman: Then, if the motion be not granted, I

would like to ask Mr. Aller a few questions, if I may, with respect to his testimony.

The Examiner: All right.

[18348] *Cross Examination* by Mr. BERMAN:

XQ. You lay considerable stress on the fact that the three directors who were appointed a committee of some kind to make an analysis of the draft of the plan before it was submitted were not and never have been connected with the Electric Bond and Share Company; was that the substance of your testimony? *A.* That is correct.

XQ. Now, Frost, you said, was a member of the firm of W. & M. White? *A.* W. A. & A. M.

XQ. W. A. & A. M. White, who are investment bankers, are they not? *A.* No, that is not so.

XQ. Well, tell us who W. A. & A. M. White are? *A.* It is a family holding company of the White family.

XQ. And what was the White family? *A.* It is the White family of New York. Mr. Harold White is one of the members of the family. It was his father that was prominent in the Washington Water Power Company. The White family owned a substantial amount of stock in the Washington Water Power Company and received preferred stock of the American Power & Light Company in exchange for that stock.

[18349] *XQ.* Well, that W. A. & A. M. White Company, or the members of the White family, had had a brokerage and investment banking business for many years, had they not? *A.* Mr. Frost had never been a member of that family.

XQ. Would you be good enough to tell me whether it is true that the White family had been identified with a banking firm or brokerage firm of approximately the same name as this company you have mentioned? A. No, not the same name at all.

XQ. What was the name of it? *A.* I do not know their

name through history. There is a firm name White Weld & Company, I think the name is now.

XQ. And the Whites for whom this W. A. & A. M. White Company is named were partners in that White Weld & Company at one time, were they not? *A* Possibly some of the members. I do not know enough about it.

XQ. And as a matter of fact, the White Weld & Company, or its predecessors, had had intimate relations with Bond and Share in connection with the financing of some of the Northwest properties of the Bond and Share system, running way back in time, is that not true, Mr. Aller, for example, Pacific and Portland? *A.* I do not recall having heard of White Weld being [*18350*] an underwriter of any securities of Portland or Pacific. It may very well have been that they had some interest in it, but it was not a relationship sufficiently prominent to have ever been brought to my attention, sir.

XQ. And you do not recall having discussed in the course of testimony respecting Pacific and Portland that the White Weld & Company received a large amount of the securities sales business of those companies? *A.* No, I do not.

XQ. Now, the fact is, is it not, that in 1928 Bond and Share entered into negotiations with the Whites whereby a plan was consummated under which the common stock of the Washington Water Power Company was exchanged for preferred stock of American Power & Light Company, and it was pursuant to that arrangement that the firm of W. A. & A. M. White procured the greater part, if not all, of its present holdings of American securities? *A.* It may very well have been that White Weld participated in the transaction under which the exchange of preferred stock of American was made for the common stock of the Washington Water Power Company.

XQ. The Whites owned the controlling interest in the Washington Water Power Company, which was transferred

to American pursuant to that transaction, is that not true? [18351] *A.* I do not know that they did own a controlling interest and I do not think I have ever testified to that effect, sir.

XQ. I think you have, Mr. Aller. *A.* I do not think I have, Mr. Berman.

XQ. Now, Mr. Frost, at any rate, is a partner in the firm of W. A. & A. M. White, which we have thus identified, is he not? *A.* That is correct.

XQ. Now, Mr. Ericson, you say, is associated with the S. W. Childs Management Company? *A.* Yes, sir.

XQ. Will you tell us who S. W. Childs was? *A.* S. W. Childs was, when active, a director in some of the American companies or in American itself—certainly in some of the Bond and Share affiliates. Mr. Childs, I believe at one time was a director of American, but I am not certain, sir, and I will have to look up the record. It was not for a long time, if he was.

XQ. Prior to 1935? A. Oh, Yes.

XQ. At a time when there was no question about the fact that Bond and Share controlled American? *A.* I do not quite understand you.

[18352] *XQ.* At the time Mr. Childs was a director of American, there is no question in your mind, is there, Mr. Aller, that Bond and Share was in control of American? *A.* There is no question in my mind that Bond and Share is in control of American today, sir. We have admitted it.

XQ. I am glad to hear you say that, Mr. Aller. Now, the fact is that Childs was related to a prominent official of the General Electric Company, is that not true Mr. Aller? *A.* By marriage.

XQ. He was a son-in-law, was he not, of Coffin, who was chairman of the board of General Electric? *A.* That is correct.

XQ. And General Electric, until 1925, was the parent

company and the controlling company of Electric Bond and Share Company? *A.* That is correct.

XQ. So that would you think it quite accurate to say that Ericson, who represents the Childs interests on the board of American, has never had any connection with Bond and Share, in view of that fact that he— *A.* He never had had any connection whatever with Electric Bond and Share Company. He now represents certain [*18353*] estates and management firms. I do not think he knows anybody in the Electric Bond and Share Company or has ever met them.

XQ. Well, let us put it this way: Mr. Ericson may not have been connected with Bond and Share, but the interests which he represents, namely, the Childs interests, do have and have had a long period of association with Bond and Share and General Electric?

Mr. MacLane: There ancestors had. This is ancestral affiliation. It is a new form. It has just been created for this particular purpose, at this particular time.

Mr. Berman: Well, the Chinese spirit, Judge, is very much in the news today.

Mr. MacLane: If we can accept your interpretation of history, Mr. Berman, you and I are related, because we both link through a common ancestor.

Mr. Berman: Well, Judge, I may have you declared a holding company as to me one of these days.

XQ. (by Mr. Berman): When did Mr. Bauer come on the board, Mr. Aller? *A.* I think about four years ago.

XQ. You said he was a retired banker. With what bank had he been affiliated before he— *A.* I said investment banker.

XQ. Very well, what investment bank had he been [*18354*] affiliated with before his retirement? *A.* An investment banker is not necessarily connected with a bank, sir.

XQ. Was this gentleman connected with a bank, or was he

not? *A.* Mr. Bauer was a member of the firm of Bauer, Pogue.

XQ. Now, in view of the fact that, as you said a few minutes ago, Electric Bond and Share Company controls American, you will agree, I take it, that Electric Bond and Share Company selected Mr. Bauer to take a position on the board of American, is that not so? *A.* They did not happen to select him in the first instance. They have elected him, or furnished the vote which went a long way toward electing him at the most recent stockholders meeting.

XQ. All right. Well, then, these three gentlemen whom you have termed non-affiliated with Bond and Share and especially selected because of that non-affiliation, were the ones who were most directly in charge of analyzing and approving the plan which you have filed? *A.* That is correct.

XQ. Now, Mr. Aller, was it the feeling of the board [*18355*] of directors and your own feeling that this plan should be filed here from a desire to cause American Power & Light Company to conform with the requirements of the Public Utility Holding Company Act of 1935? *A.* Definitely the plan sets forth and it was the definite opinion and intention of the members of the board that this plan would be filed and that the plan itself would enable American to comply with the standards and provisions of Section 11(b) of the Holding Company Act, both as to sub-section (1) and sub-section (2).

XQ. Was that what motivated the board and yourself in the filing of this plan, or did you have some other motive, Mr. Aller? *A.* No motive other than that whatever, sir.

XQ. Is it not a fact, Mr. Aller, that you filed this plan and your board filed this plan because it believed that if it failed to follow this plan, and it had been advised by counsel that if it failed to file this plan, it faced the prospect of an order of dissolution by the Commission entered in the present

proceeding? *A.* The various possible alternatives with which American was confronted, namely, the possibilities of contesting orders of the Commission on the one hand or of complying with the Act on the other hand, were certainly discussed and [*18356*] considered, and as one of the possibilities before us was an order of dissolution which might be handed down by the Commission or there might be an order handed down under 11(b) (1) proceeding that would require dismemberment of the American system because all of the properties were not entered into one system, it was felt that the values inherent in American's system could be preserved to American stockholders much better if American should file a plan which would permit it to conform to the Act, and in it was a desire to conserve those values for American security holders that the plan was filed.

XQ. Then it is correct to say, Mr. Aller, that the plan was filed in order to avoid the entry of an order of dissolution in the present proceeding? *A.* It was certainly felt that if American did file such a plan the Securities and Exchange Commission would see the merit in that plan and would see that no order of dissolution would be necessary, and we felt that the Commission would see that these values could be preserved under the plan much better than they could through any order of dissolution.

XQ. That is as responsive an answer as you can give to my previous question, is it, Mr. Aller? *A.* I think it gives the thought of what was in the minds of the directors very fully, sir.

XQ. Now, is it not a fact that at this meeting of the [*18357*] directors of April 23, 1941, an excerpt from the minutes of which you have placed in evidence as Respondents' Exhibit 327-A, counsel for American came before the board and, discussing the pending 11(b) (2) proceeding, and your testimony with respect to it, confirmed the estimate you had given that this proceeding would have only

about 60 days more to run before its conclusion and that your counsel advised the board that a pre-emptory order of dissolution was a contingency which should be based and which the company should be prepared to meet if it should occur, and then counsel stated that in view of this contingency the directors should give serious consideration to the formulation of plans or programs which might be adopted in such event, that is, in the event of dissolution, and an outline of what such plans or programs might involve? Now, is it not a fact that that meeting and that report of counsel to the board with respect to the eminent termination of the 11(b) (2) proceeding and the possible outcome of it was the genesis of the plan which has been filed by you?

Mr. MacLane: Well, if there had not been any Act we would not have filed any plan to conform to the Act.

Mr. Berman: Judge, my point is that there was an Act for six or seven years before which required you to conform to it, and it was not until you had a proceeding for a year and a [18358] half, and your confirming to the directors that it had only 60 days more to run that these gentlemen bestirred themselves to file a plan.

XQ. (by Mr. Berman): Now, Mr. Aller, in this plan that you filed, is it correct to say that the plan makes no definite provision for the retirement of the outstanding long-term debt of American Power & Light Company; it makes no provision for number of shares of new stock to be issued by American Power & Light Company in the prospective reorganization, nor in what manner that stock will be allocated among the various classes of security holders; it makes no election as to what alleged system of American will be retained; and it makes no provision whatever for severing control of American from Bond and Share—all those things are true, is that not so? *A.* It makes no provision with respect to the debt except in general terms to say

that debt will be retired in some form, either through exchange of securities or through payment of cash.

XQ. Excuse me. No specific provision, though, is made—*A.* No definite provision as to how much cash would be paid for the retirement of debt. In fact, sir, at that time we did not even know how much we would have to pay for the retire- [*18359*] ment of debt. It is since that time that there have been several orders of the Commission, which had been to the effect that on a compulsory retirement of debt, under this sort of proceeding, the payment of premium would not be required.

XQ. Excuse me. But your plan purports to be a voluntary plan of compliance, Mr. Aller, and not a compulsory one, so that that factor may never enter into the matter. *A.* It may still. It is possible that there might be an application to the court, of course.

XQ. At any rate, no provision—*A.* And that would make it compulsory.

Then, in discussions with the staff of the Commission, it had developed that possibly debt should be retired by the delivery of tickets similar to the tickets, you might call them, that, that would be used in the reclassification of stock. It was felt that there would be a development of the views of the Commission within a few months or a short time following the filing of the plan which would permit us to present to the Commission concrete plans for the retirement of the debt and the distribution of the stock and the selection of a principal system, all by amendment to the plan which is contemplated.

XQ. Now, with respect to that matter of the principal system, you stated that you did not know at the time you filed [*18360*] the plan what interpretation the Commission was going to give to B of Section 11. Now, the fact of the matter is that the Engineers Public Service Company decision came out on July 23, 1941, is it not? *A.* I would like

to correct that. The release came out on the 24th, so we could not have known about it.

XQ. All right, one day after you file your plan. A. That is correct.

XQ. Did you proceed by amendment then to designate which of your alleged systems you elected to retain? A. We have not even had any indication that the Commission would give serious consideration to the plan up to this time. About a month following the filing of the plan—and that is a month following the issuance of the Engineers Public Service Company order—I came to Washington and interviewed the staff with respect to the plan and asked that it be given consideration and that I be given an opportunity to come down and discuss it. I was advised at that time that the plan was under consideration by the staff, that a report would be prepared in due course, and that it would be useless to try to discuss the matter until that report was completed. [*18361*] Then a month later I called again and asked if it was time for me to come down and discuss it and was advised that the report had not been given full consideration, that I would be informed when the Commission's staff desired to talk with me about it. I have not been informed since that time.

XQ. In view of the fact that a year has gone by since that time, Mr. Aller, have you never gained the impression that perhaps the staff was not highly impressed with your plan? *A.* I gained the impression that the staff was not highly impressed with many very good things.

[*18362*] *XQ.* At any rate, this is one of the good things that you gained the impression it was not impressed with, is that right? *A.* I have not discussed the matter with any member of the Commission's staff at all since about the 1st of September, 1941, at which time the Commission told me that they would call me when they were ready to discuss

the plan, and therefore, I am not in a position to say what the Commission's staff thinks about the plan.

XQ. You are aware, are you not, that your counsel has had discussion with counsel for the Division for the last nine or ten months and that at all times the impression has been conveyed to him that this plan was not regarded seriously by the staff of the Commission, as far as the staff was concerned, are you not? *A.* My counsel has never told me that this was not being considered seriously by anybody.

XQ. All right.

The fact of the matter is, is it not, Mr. Aller, that practically one year has elapsed since the time you filed that plan, one year has elapsed since the date the Commission's position has been made clear as to the meaning of B of Section 11, but no amendment has been filed by you (a) either as to the system you elect to retain, or [*18363*] (b) as to the manner of allocation of the stock among the various classes of security holders, or (c) as to the manner or time of the payment of the debt; all that is true, is it not? *A.* That is true.

XQ. Now, Mr. Aller, the plan makes no provision whatever, does it, for the severance of control by Bond and Share of American? *A.* No plan presented by American can ever provide for the severance of control by Electric Bond and Share, as I understand the matter.

XQ. Well, let us see whether that is true. For example, does the plan suggest that immediately upon the effective day of the reorganization the present management of American and the directors, all of whom owe their offices to Electric Bond and Share Company, will resign and set up machinery for the election of new people in no way affiliated with Electric Bond and Share Company? That is a provision the plan could make for the severance of control. Does it do it? *A.* Do you mean on the date when there would be a reclassification of stock, or on a date—

XQ. (Interposing) At any given date. Pick your own date. Does it provide it will do it any time? [*18364*] *A.* It will automatically take care of itself. It seems to me it would be highly immaterial whether the election took place at the date of the final disposing of the property or when American elected to retain its particular system. Bond and Share will have a vote in the American system. It will have some measure of voting power after a reclassification, and I have stated I do not know what that will be. I can not do anything about it. This Commission will have to do something about it.

XQ. Well, you can do something about the ousting of yourself and your associates from office and the setting up of machinery for the election of a new management and directorship which does not have possession of the proxy machinery, such as the present management does, can you not, Mr. Aller? *A.* We could have a new election of officers. There will be such an election of officers—

XQ. (Interposing) I am not talking about an election, sir. I am talking about the divorcement of the proxy machinery and the ousting and sterilization of the present management and directorship which represent Bond and Share control. Does the plan make any provision for that at any time? *A.* Certainly it makes no provision for the sterilization [*18365*] of the management.

XQ. I think I will agree that it should be so, Mr. Aller. Now, the fact of the matter is, is it not, Mr. Aller, that this plan neither makes provision nor in any sense furnishes assurance that American Power & Light Company when reorganized will not continue to be under the control of Electric Bond and Share Company? *A.* I can not see how these parcels of properties which now constitute the American Power & Light Company can, by any stretch of the imagination, be considered to be under the control of the

Electric Bond and Share Company after this reorganization is effected.

XQ. Well, now, Mr. Aller, you are familiar with the testimony which was offered in evidence here this morning by counsel for your company, Mr. Calkins, through a Mr. Phillips of Ebasco Services, and which purports to show a value of something like $315,000,000 for the investment securities owned by American, are you not? *A.* I am familiar with the offer of proof made by Mr. Calkins and know that that constituted an offer with respect to the physical values underlying the assets of American Power & Light Company.

XQ. It went further. It purported to establish a [*18366*] value for those assets on an earnings basis, as I understand, and reached the conclusion that the assets of American are reasonably worth $315,000,000 aside from the company's cash and current receivables? *A.* On the assumptions that were made therein.

XQ. You do not agree with those assumptions, I take it? *A.* I do not quarrel with them, and I have not analyzed them so meticulously as to be able to stand cross examination with respect to them. If you would like to cross examine somebody about them, I am sure that Mr. Phillips can be brought here.

XQ. No, I think the underlying facts are perfectly plain. However, what I want to ask you is this: Have you ever figured out what percentage of American securities Bond and Share would emerge with in a reorganization if Mr. Phillips' contentions as to the value of American's assets are established? *A.* Well, I have not, nor have I any idea that any proposal made by anyone in the organization of Electric Bond and Share Company would be, of necessity, the proposal that would be finally accepted by the stockholders of all classes in American Power & Light Company.

XQ. Was Mr. Phillips a witness for Electric Bond and [*18367*] Share Company? *A.* No, I did not say so.

XQ. Who is paying Mr. Phillips? *Q.* I am paying Mr. Phillips.

XQ. And he was your witness? *A.* That is right.

XQ. And he, on behalf of your company, attempted to present testimony that the value of the company's assets exceeds $315,000,000. Now, what I want to ask you, Mr. Aller, is whether it is not true that on that basis Electric Bond and Share Company would emerge with close to 10 per cent of the voting securities of the reorganized American? *A.* I do not know, sir. I have not figured it out. I would like to say this, that it was because of feeling that instead of considering the plan and its full merits the discussions would resolve immediately by all stockholders to the question of the relative recovery that each class was to have, and that is the issue that you are raising now instead of constructively analyzing the plan as such.

XQ. Mr. Aller, I am trying to make two points in my questioning of you. The first is that it does not seem to me that you have a plan, since the so-called plan omits all [*18368*] the essential elements of a plan. The second point I am trying to make is that you will agree, will you not, that the plan makes no provision whatever for severing Bond and Share's present control over American, either by assuring that Bond and Share will have so small a proportion of voting securities that it can exercise no effective voice in American or by assuring that the present management and directors of American who were placed in office by Bond and Share will be removed from office and non-affiliated persons placed in office, and no provision is made for the severance of the service contracts between all the American subsidiaries and Ebasco Services, a wholly owned subsidiary of Bond and Share; none of those things are provided for in the plan, are they? *A.* Well, it was a pretty long question,

but let me begin at the end of it and we will see if we can hit the various points. In the first place, Ebasco Services—this plan of American Power & Light Company provides for the severance of most of these properties with American Power & Light Company, and possibly the severance of all of them from American Power & Light Company.

XQ. In the event it dissolves? *A.* There may be possibly a dissolution.

[*18369*] *Q.* Well, then, we have no problem, of course. *A.* I say possibly a dissolution. It has the right under the Act to retain one of those several systems. Now, those several systems are a group of properties in the Northwest, one in Texas, one in Nebraska-Kansas, and the little Minnesota-Superior group. It claims that it would have the right to retain one of those systems at least. We did not know prior to July 23, 1941 what the Commission's position would be with respect to a second one of those systems.

XQ. Well, you have known since July 23, 1941? *A.* We have known that there was an order in that case, which order, as I interpret it, would not permit American to possess the Northwestern system and the Texas system. I am not altogether certain that it would not permit American to retain the Texas system and the Kansas-Nebraska system. Maybe it would permit that. Probably it would permit that. It certainly would not permit the retention of Florida or Arizona. It probably would permit the retention of New Mexico. That is very small. Now, if it retained one of those properties, all the rest of them would have to go, and when it goes it is foolish for me to say, having distributed this to the 34,000 stockholders of American Power & Light Company, that I am going [*18370*] to require that company to guarantee that they will never employ Ebasco Services in whatever form Ebasco Services may take in years to come. I have nothing to do with it. It is not my

concern. They are going to be their own rooster. So, it is foolish for me to put in a plan a provision that when all these companies are separated from our system, that they will not be serviced by Ebasco Services.

XQ. Well, how about the retained companies? *A.* Well, it is possible that it will be found desirable to dissolve American entirely. That would depend upon the tax questions and other legal questions as to whether the company itself is the particular corporate organization that you would want to have so continue to function.

[*18371*] There is a question of American Power & Light Company's assumed debentures, the Southwestern Power & Light Company debentures, which are not callable at this time. It may be possible for one of these succeeding companies to assume that debt, or it may be found desirable to have American continue in some form with that obligation, which is a relatively small obligation. However, as to Bond and Share, that is hardly, in my opinion, a proper subject for the plan. As to the other matters, namely, the definitive plan for retiring the debt, the definitive election of a system, and the definitive program for reclassification of the stock, I have told you that all those should be subjects for amendment to the plan, and whenever we get to a point where the Commission's staff would indicate to us that they will sit down and constructively consider the plan with us we will be in a position to intelligently file such amendments.

XQ. Well, then, you do not think it will be more accurate to describe the amendments you have referred to as the prospective plan, rather than the document you have filed? *A.* Not at all.

XQ. You might term the document you filed an intention to file amendments which would be a plan? *A.* That is a rather foolish way to express it.

XQ. I am glad to see a flash of your old spark and [*18372*] fire, Mr. Aller.

Mr. Berman: Those are all the questions I have of Mr. Aller.

Mr. MacLane: I was not present this morning, but I understand from Mr. Calkins that certain testimony was introduced or an agreement was reached with the counsel that by reason of certain discussions and negotiations between counsel for the company and for the staff of the Commission the American was not to be charged with any laches for not having heretofore urged its motion to consolidate and have a hearing upon this plan.

Mr. Berman: Well, a letter was placed in evidence, as I understand it, Judge, and I did agree that at some time towards the end of December you and counsel for the Division agreed that the matter would be held in abeyance.

Mr. MacLane: And you will agree with me that the matter has been under active discussion for the last two or three months between you, as counsel for the Commission, and myself, as counsel for the company, as to a method of presenting the problem to the Commission?

Mr. Berman: Judge, I will exonerate you of all laches subsequent to December, 1941, but for all the laches between December, 1941, and November, 1935, I cannot exonerate you.

[*18373*] Mr. MacLane: I will assume my share of that responsibility, but in view of the duty imposed upon the Commission I shall ask that it share that responsibility with me.

Mr. Berman: Whatever is an equitable arrangement on that, Judge.

Mr. MacLane: Now, Mr. Aller, I have just one question, which involves a matter, perhaps, of personal privilege.

Redirect Examination by Mr. MacLane.

Q. You have employed counsel entirely uncontaminated by its employment by any other member of the Bond and Share system to represent American in the presentation and consideration of this plan, if it can ever be presented? *A.* We have employed counsel which is not employed by any of the affiliated or associated companies in the Electric Bond and Share system.

Q. And counsel for Electric Bond and Share Company will have no responsibility for the presentation or working out of that plan if it is considered? *A.* It is our intention that the firm of Root, Clark, Buckner & Ballantine will represent American Power & Light Company in connection with its reorganization plans with the Securities and Exchange Commission.

Mr. MacLane: That is all.

Mr. Berman: Is this an attempt to note the appearance [*18374*] of new counsel in this proceeding, Judge?

Mr. MacLane: No, sir.

Mr. Berman: Merely to place on the record the fact that at some point new counsel will appear?

Mr. MacLane: I assume full responsibility for the continuance and conclusion of this proceeding, and as I understand it, no other counsel will be employed in this proceeding, unless some unforseen contingency arises, except as and in connection with an incident to the consideration of this plan of reorganization, if we can secure consideration of the plans.

Mr. Berman: Well, I do not know what relevance that statement of Mr. Aller's has, but if you—

Mr. MacLane: There has been so much emotional and ancestral and other forms of affiliation here that I wanted to exclude the lawyers from the family.

Mr. Berman: Still leaving the president affiliated, however.

Mr. MacLane: Does this conclude the hearing?

Mr. Berman: I think it does, Judge, and I think we ought to proceed now with the statement that we had prepared.

Mr. MacLane: Well, for the sake of the record, Mr. Examiner, and in accordance with an understanding reached with Mr. Berman, I wish to reiterate and reaffirm that the motion to dismiss, which was filed on the ninth day of September, 1940, and was offered and received in evidence as Respondents' [*18375*] Exhibit No. 2. I believe the transcript of proceedings on that day, beginning on page 304, shows that it was understood that the taking of testimony would not be delayed for the argument of that motion at that time, but that the motion would be reserved for presentation at the conclusion of the hearings. Therefore, I now and here formally renew that motion at the close of the case on all the grounds stated in said motion and reserve the matter for formal presentation to the Commission. I also reserve, for the same reasons, the document entitled "Statement by Respondents' counsel on objections to exhibits and parts of exhibits," introduced in evidence on the ninth day of September, 1940, and which was similarly reserved for Commission action at the conclusion of proceedings, and that document was labelled Respondents' Exhibit No. 1. I may say, with respect to that particular motion, that there has been such a wealth of evidence, verbal and documentary, that the motion sort of pales into insignificance at this time.

[*18376*] However, I would like to consider the matter further and reserve that for Commission ruling. I also wish to expressly reserve for Commission ruling the question of the exclusion of testimony and exhibits at various times during the hearing which was reserved for ruling of the Commission and specifically the questions presented by the rulings on objections and exceptions thereto with respect

to value testimony offered in evidence this morning. We give notice before closing this record that those questions as well as the motion to consolidate the proceedings relating to the plan are reserved for ruling of the Commission, and any agreement to close the record is subject to such rulings as the Commission may make on any of those matters.

Mr. Berman: Mr. Examiner, of course I have reserved only the right to file the document which was discussed earlier, and the record shows that. At this time, I wish to state the substance of an agreement which has been reached by counsel for the Division and counsel for the respondents with respect to the closing of the record in this proceeding, so far as it relates to the respondent, American Power & Light Company. It is understood that the record in the above-entitled proceeding shall be determined closed so far as it relates to American Power & Light Company, subject to [*18377*] such order or orders as the Commission may enter with respect to the reserved issues stated on the record a moment ago by Judge MacLane. Hereafter, counsel for the Public Utilities Division shall proceed to draft a proposed "findings and opinion" and order of the Commission with respect to the issues in the above-entitled proceeding as respects respondent American (without prejudice to inclusion in such "findings and opinion" of findings with respect to any other respondent in the present proceeding relevant to the issue as defined in the Commission's order of June 7, 1940). Not more than 25 days after such copy has been served, counsel for American shall file with the Commission such exceptions to said proposed "findings and opinion" and order and such requests for additional findings as they desire, and may file a brief in support of such exceptions and requests. Not more than 15 days thereafter, counsel for the Public Utilities Division shall have the right to file such reply or other briefs as they desire.

The Commission shall issue its final "findings and opinion" and order upon the basis of the record of the proceeding, the tentative "findings and opinion" and an order described above, respondents' exceptions thereto, and [*18378*] requests for additional findings, and the briefs of both sides, and after hearing such oral argument as the Commission may authorize; provided that the Commission may order such further proceedings as it may determine with respect to the disposal of the issues resulting from rulings of the Trial Examiner on exclusion of evidence, or from pending motions reserved for the Commission's decision; all such matters being specifically identified on the record as requiring Commission ruling. Counsel for American Power & Light Company stipulate that they waive a trial examiner's report and the filing of proposed findings of fact and conclusions of law, other than as specified above. Does Judge McLane stipulate that the statement just read is agreed to by American Power & Light Company?

Mr. McLane: Yes, sir.

Mr. Berman: And you are authorized, I take it, Judge, to stipulate on behalf of associate counsel Reid & Priest, of record in this proceeding?

Mr. McLane: Yes, sir.

Mr. Berman: Counsel for the Public Utilities Division likewise so stipulates.

Mr. McLane: I wish to add, Mr. Berman, so that there may be no misunderstanding not by way of either amendment [*18379*] or modification, that we are stipulating as to a form of procedure for the closing of this record and are expressly reserving all rights to judicial review of matters of substance involved in the proceedings.

Mr. Berman: That is my understanding, Judge.

Mr. McLane: Off the record.

[Discussion off the record.]

The Examiner: Anything further?

Mr. McLane: It is customary to thank the Examiner for his careful and courteous attention, and not only customary, Mr. Examiner, but I wish to express our appreciation of the courtesy you have uniformly shown us throughout this hearing and of your patience with us.

Mr. Berman: Mr. Examiner, I think you have been very long suffering and I join in the Judge's statement.

The Examiner: Thank you. As to the American Power & Light Company, the hearing is closed.

[Whereupon at 6 o'clock P. M. the hearing was adjourned.]

* * * * * *

[*18385*] Mr. Berman: Mr. Examiner, may it be stipulated between counsel that neither side has any further evidence to adduce as to respondents, American Power & Light Company and Electric Power & Light Corporation, and that as to such respondents the record may be deemed closed?

Mr. Fromen: Counsel for the respondents, Electric Power & Light Corporation, so stipulates.

Mr. Calkins: Counsel for American so stipulates.

Mr. Berman: At the hearing held on July 22, 1942, counsel for American Power & Light Company stipulated that it waived the right to request Trial Examiner's report and the filing of proposed findings of fact and conclusions of law, other than in the manner specified on such record. Will Electric Power & Light Corporation at this time [*18386*] stipulate that it likewise waives Trial Examiner's report and the filing of proposed findings of fact?

Mr. Fromen: Counsel for Respondent, Electric Power & Light Corporation, so stipulates.

The Examiner: The several stipulations will be noted.

Mr. Berman: At this time, Mr. Examiner, I will ask that there be received, as Commission's Exhibits 1070 and

1071, stipulations entered into between counsel for the Public Utilities Division and counsel for American Power & Light Company and Electric Power & Light Corporation, respectively, with regard to various procedural matters incident to the disposition of the present proceeding by the Commission.

Mr. Calkins: No objection.

Mr. Fromen: No objection.

The Examiner: Without objection, the two stipulations just identified will now come in as Commission's Exhibits 1070 and 1071.

[Commission's Exhibits 1070 and 1071 received in evidence.]

Mr. Berman: Mr. Examiner, at this time I will move that the hearing be adjourned subject to further disposition and call of the Commission.

The Examiner: Any objection?

Mr. Fromen: No objection.

Mr. Calkins: No objection.

[*18387*] The Examiner: The motion is granted and the hearing in this proceeding, in so far as it pertains to American Power & Light and Electric Power & Light, is now closed and the balance of the matters comprehended by the Commission's order is adjourned subject to the order of the Commission

Mr. Berman: Thank you very much, Mr. Examiner.

Mr. Fromen: Thank you, Mr. Examiner.

Mr. Calkins: Thank you.

[Whereupon the hearing in the above-entitled matter was closed subject to call of the Commission.]

[Document No. 12.]

United States of America

Before the Securities and Exchange Commission

In the Matter of

Electric Bond and Share Company
American Power & Light Company
Pacific Power & Light Company
Electric Power & Light Corporation
Utah Power & Light Company
National Power & Light Company
American & Foreign Power Company Inc.
Ebasco Services Incorporated

Respondents

File No. 59-12

MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR DIRECTIONS AS TO FURTHER PROCEDURE.

[Received for Filing June 22, 1940.]

The respondents in the above entitled matter (excluding American & Foreign Power Company Inc., which has been dismissed as a party by order of the Commission dated June 17, 1940) respectfully submit the following motion, Commission counsel herein having announced, in effect, that he rested his case:

First: The above named respondents respectfully move that these proceedings be dismissed on the following grounds:

(a) That no evidence has been offered in support of the allegations or charges or grounds for action specified in the Commission's original notice and order for hearing herein made on May 9, 1940, as further limited and defined by the orders of June 7, 1940 and June 17, 1940;

(b) That the documents identified as exhibits in evidence do not tend to sustain, and are insufficient to sustain, the allegations, charges or grounds for action specified in the said orders of May 9, 1940 and June 7, 1940;

(c) That the evidence offered is insufficient to sustain the allegations, charges or grounds for action specified in said order of May 9, 1940, viz.: That the structure of the holding company system of Electric Bond and Share Company is unduly and unnecessarily complicated, and that voting power is unfairly and inequitably distributed among security holders; or to permit a determination, under the order of June 7, 1940, whether it is necessary to discontinue existence of American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company to insure that the structure of the holding company system of Bond and Share shall not be unduly or unnecessarily complicated, and that voting power shall not be unfairly or inequitably distributed among security holders of such system; and

(d) Neither the notice and order of May 9, 1940, nor the limiting order of June 7, 1940, nor the documents offered in evidence as exhibits during the hearings held before the Trial Examiner on June 18 and 19, 1940, nor the statement of Commission counsel at the conclusion of his identification of said documents, or any of them, apprise these respondents of the factual issues which they are required to meet, nor of the evidentiary facts which are relied upon to support any determination or order which the Commission may conclude to make in application to any of the respondents of the provisions of Section 11(b)(2) of the Public Utility Holding Company Act of 1935. To require the respondents to proceed and present testimony on the record as thus far

made before the Trial Examiner would constitute a denial of due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and would be an abuse of procedural discretion.

SECOND: In the alternative, the respondents move that Commission counsel be directed, prior to the introduction of any evidence by respondents, to withdraw his submission or "rest" of his case, and to specifically identify those parts of the documents offered by him as exhibits which he will accept and upon which he relies as evidence, and that he offer such further evidence, oral or documentary, as may be required to apprise these respondents of the facts which Commission counsel contends, or will contend, establish the ultimate issues herein, viz: whether the structure of the holding company system of Electric Bond and Share Company is unduly and unnecessarily complicated; whether voting power is unfairly or inequitably distributed among security holders of said system; and whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, or any of them, in order to insure that the structure of said holding company system shall not be unduly or unnecessarily complicated, and that voting power shall not be unfairly or inequitably distributed among security holders.

This motion is based upon the official report of proceedings herein, as embodied in the transcript thereof made by Smith & Hulse, official reporters, for June 18 and 19, 1940, and upon the record, documents and exhibits in this case.

Respondents file with this motion their brief of argument, as required by the rules of practice of the Commission, and respectfully request an oral argument thereon.

This motion is made with full reservation of constitutional and legal rights, as provided in Rule 4 of the Rules

and Regulations of the Commission under the Public Utility Holding Company Act of 1935, and subject to and reserving to the respondents all constitutional and legal rights as more fully set forth and stated in the answer of the respondents herein filed with the Commission on June 15, 1940.

Dated, New York, N. Y., June 21, 1940.

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A member of said firm
Office and Post Office Address,
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Attorneys for Respondents.

[DOCUMENT No. 14.]

UNITED STATES OF AMERICA
Before the Securities and Exchange Commission

In the Matter of
Electric Bond and Share Company
American Power & Light Company
Pacific Power & Light Company
Electric Power & Light Corporation
Utah Power & Light Company
National Power & Light Company
Ebasco Services Incorporated
Respondents

File No. 59-12.

STATEMENT BY COMMISSION COUNSEL WITH RESPECT TO EXHIBITS INTRODUCED AT THE HEARINGS HELD ON JUNE 18 AND 19, 1940

[Received for Filing July 1, 1940.]

Ultimate Issues

Counsel for the Commission contend that the affirmative of the issue defined in the Commission's order of June 7, 1940 (as modified by the Commission's order of June 17, 1940 dismissing American and Foreign Power Company Inc. as a party) is established by the exhibits designated Commission Exhibits Numbers 11–70, inclusive, in the manner hereinafter set forth[1]:

I

The continued existence of American, Electric, and National unduly and unnecessarily complicates the structure of the holding company system of Bond and Share in that they neither perform nor are equipped to perform necessary or important functions with respect to the companies in said holding company system, but on the contrary they cause unnecessary and unwarranted expenses of substantial amount, all as particularized hereinafter:

a. The functions of generating, transmitting and distributing electric energy for sale and of distributing natural and manufactured gas at retail, and all activities incidental

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[1] The following terms, whenever used in this statement, have the meanings indicated below:

"Act"—The Public Utility Holding Company Act of 1935
"Bond and Share"—Electric Bond and Share Company
"Ebasco"—Ebasco Services Incorporated
"American"—American Power & Light Company
"Electric"—Electric Power & Light Corporation
"National"—National Power & Light Company
"The sub-holding company respondents"—American, Electric, and National.

to such functions, in the holding company systems of the sub-holding company respondents are performed wholly and exclusively by the subsidiary utility companies of the sub-holding company respondents, excepting only the servicing activities which are performed by Ebasco.

To establish the nature and activities of the subsidiary utility companies as above stated, the following exhibits are relied upon:

(1) Exhibits 11, 12, 13, 16(a), 17(a), 18(a), 23(a), 24(a), 25(a), 30(a), 31(a), 32(a).

Exhibits 11, 12, and 13 are the U5B, U5S (1938), and U5S (1939) statements, respectively, of Bond and Share; Exhibits 16(a), 17(a), and 18(a) are the first volumes of the corresponding statements of American; Exhibits 23(a), 24(a), and 25(a) are the first volumes of the corresponding statements of Electric; and Exhibits 30(a), 31(a), an 32(a) are the first volumes of the corresponding statements of National. Item 4 of each such statement contains a list of the holding companies and subsidiaries, showing state of organization and type of business for each such company.

(2) Same exhibit numbers as in (1), omitting Exhibits 11, 12, and 13

Item 5 of the U5B and each of the U5S statements of each sub-holding company respondent states the general character of the business of each company of the system, and any substantial changes which have occurred therein.

(3) Same exhibit numbers as in (2)

Item 6 of the U5B and each of the U5S statements of each sub-holding company respondent contains a description of the properties of each company of the system, and changes which have occurred therein.

(4) Same exhibit numbers as in (2)

Item 7 of the U5B and each of the U5S statements of each sub-holding company respondent sets forth information concerning electric and gas sales, and interstate transactions, of the companies of each sub-holding company system.

(5) Same exhibit numbers as in (2)

Item 12 of the U5B and each of the U5S statements of each sub-holding company respondent contains information as to important leases of the companies of each sub-holding company system.

(6) Same exhibit numbers as in (2)

Item 18 of the U5B and each of the U5S statements of each sub-holding company respondent contains information respecting the service, sales and construction contracts of the companies of each sub-holding company system.

(7) Exhibits 16(a) and (b), 17(a), 18(a), 23(a-c, incl.), 24(a), 25(a), 30(b) and (c), 31(a), 32(a).

Exhibit B of the U5B and each of the U5S statements of each sub-holding company respondent set forth articles of incorporation, by-laws, etc., and changes therein for the companies of each sub-holding company system.

(8) Exhibits 16(g), 17(b), 18(b), 23(i), 24(b), 25(a) 30(g), 31(a), 32(a)

Exhibit E of the U5B and each of the U5S statements of each sub-holding company respondent comprises maps of utility operations.

(9) Exhibits 16(g), 17(b), 18(b), 23(i), 24(b), (d), (e), 25(b), 30(g), 31(a), (b), (d), 32(b)

Exhibit F of the U5B and each of the U5S statements of each sub-holding company respondent contains cop-

ies of annual reports to stockholders of the companies of each sub-holding company system.

(10) Exhibits 16(h-n, incl.), 17(b-h, incl.), 18(b-f, incl.), 23(i-l, incl.), 24(b-e, incl.), 25(b-e, incl.), 30(g-i, incl.), 31(a-d, incl.), 32(b-d, incl.)

Exhibit G of the U5B and each of the U5S statements of each sub-holding company respondent sets forth copies of annual reports to regulatory commissions of the companies of each sub-holding company system.

(11) Exhibits 21, 22, 28, 29(a), (b), 35, 36

These exhibits comprise the Form 10 and 10-K statements of the three sub-holding companies. Item 11 of the Form 10 statements and Item 7 of the Form 10-K statements set forth information respecting the general character of the business of the companies of each system and changes therein.

(12) Same as (11)

Item 12 of the Form 10 statements and Schedule II of the Form 10-K statements set forth a description of the properties of the companies of each system, and changes therein.

(13) Exhibits 68(b), 68(d), 68(e), and 68(f)

Exhibit 68(b) contains Articles XVIII to XXI, inclusive, of the stipulation of facts in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company, et al., and Exhibit 68(d), (e), and (f) are exhibit volumes to said stipulation containing exhibits referred to in Articles XIX, XX, and XXI thereof. Said Articles XIX, XX, XXI and the exhibits referred to therein contain a description of the electric operations of the subsidiaries of the three sub-holding companies, and of the properties and physical operations of the gas companies of the systems.

(14) Exhibits 68(a) and 68(c)

Articles VI, VII, VIII of the aforementioned stipulation of facts and the exhibits referred to therein which are contained in Exhibit 68(c) recount the organization and history of the sub-holding companies with a list and description of their subsidiaries.

(15) Exhibit 38(a) to 38(t), inclusive

These exhibits contain the record of the proceeding before this Commission in connection with the declaration of Ebasco under Section 13 of the Act, and Rule U-13-22 thereunder. This record contains information with respect to the operations of the subsidiary utility companies of the three sub-holding company respondents.

b. The sub-holding company respondents operate merely as securities companies engaged in holding securities of their operating subsidiaries, exercising voting rights incidental thereto, receiving interest and dividends thereon, and servicing their own outstanding securities.

To establish the nature and activities of the sub-holding company respondents as above stated, the following exhibits are relied upon:

(1) Exhibits 16(a), 17(a), 18(a), 23(a), 24(a), 25(a) 30(a), 31(a), 32(a)

These exhibits comprise the U5B, U5S (1938) and U5S (1939) statements of each of the sub-holding company respondents, as described above. Item 5 of each such statement states the general character of the business of each such sub-holding company respondent, and any substantial changes which have occurred therein.

(2) Same exhibit numbers as in (1)

Item 6 of the U5B, U5S (1938) and U5S (1939) statement of each sub-holding company respondent contains

a description of the properties of each such company, and changes which have occurred therein.

(3) Exhibits 19, 26, 33

These exhibits contain the U-14-3 statements of each sub-holding company respondent. They include financial and operating data which throw light upon the nature and extent of the activities of these companies.

(4) Exhibits 63, 64, 65

These exhibits are tabulations prepared by the staff of the Commission showing the expenses for the year 1939 of each sub-holding company respondent, as bearing on the nature and extent of the activities of these companies.

(5) Exhibit 70

This exhibit consists of information supplied by the respondents setting forth an analysis of personnel of each sub-holding company respondent.

(6) Exhibits 46, 47, 48

These exhibits comprise the annual reports of the sub-holding companies to their stockholders, 1929–1938, inclusive. They afford information with respect to the functions and operations of the sub-holding companies during such years.

(7) Exhibits 18(b), 25(b), 32(b)

Exhibit F of the U5S (1939) statement of each sub-holding company respondent contains a copy of the annual report to stockholders of such company for the year 1939, and affords information concerning the operations of such company for that year.

(8) Exhibits 21, 22, 28, 29(a) and (b), 35, 36

These exhibits are the Form 10 and 10-K statements of the sub-holding company respondents. Item 11 of the

Form 10 statements and Item 7 of the 10-K statements contain information concerning the general character of the business of the sub-holding company respondents, and changes which have occurred therein.

(9) Exhibits 21, 28, 35

Item 12 of the Form 10 statements of the three sub-holding company respondents contains information with respect to the properties of each sub-holding company respondent.

(10) Exhibit 69

This exhibit sets forth the answer of the respondents in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company et al. Paragraphs 32 to 35, inclusive, and paragraph 39 thereof contain statements with regard to the nature and activities of the sub-holding company respondents and their relations to their subsidiaries and to the holding company system.

(11) Exhibits 68(b) and 68(d)

Articles VI, VII and IX, and the exhibits referred to therein, of the stipulation of facts in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company et al., contain statements with respect to the organization and history of the sub-holding company respondents and their relations to their subsidiaries and to the holding company system.

(12) Exhibits 68(b), (d), (e)

Articles X, XI, XII, XIII, XIV, and exhibits referred to therein, of the aforementioned stipulation of facts, contain a description of the relations between Electric Bond and Share Company, the sub-holding company respondents and the subsidiary operating companies

thereof, before and after November, 1935. They also set forth the history of the Bond and Share service organization, its relations to the sub-holding company respondents and their subsidiaries, and the subsequent relations with Ebasco.

(13) Exhibits 39(a) to 39(c) incl., 40(a), 40(b), 41(a), 41(b), 42(a), 42(b), 43(a), to 43(d), incl., and 44(a) to 44(c), incl.

These exhibits comprise the records of the proceedings before this Commission in connection with applications and declarations filed principally under sections 6 and 7 of the Act by various subsidiaries of American and National. The records of these proceedings establish that the sub-holding companies play no part in arranging for such financing by their subsidiaries.

(14) Exhibits 38(a) to 38(t), inclusive.

The record of the proceedings in connection with the declaration of Ebasco under Rule U-13-22, described above, throws further light upon the nature and extent of the participation of the sub-holding company respondents in the affairs of their subsidiary companies.

c. All service, sales, and construction contracts performed for subsidiary utility companies of the sub-holding company respondents are performed exclusively by Ebasco, a direct subsidiary of Bond and Share. These contracts embrace every important phase of the operations and activities of the operating companies, not only with respect to their physical operations as utility companies but also with respect to all corporate matters such as accounting, purchasing, budgeting, marketing and financing. The services are performed under contracts between Ebasco and the operating companies without participation by the sub-holding company respondents.

To establish the nature and activities of Ebasco and its relationships to the subsidiary companies of American, Electric, and National the following exhibits are relied upon:

(1) Exhibit 37

This exhibit is the Form U-13-60 statement filed by Ebasco for the year 1939, and sets forth financial and operating data establishing the nature of the organization and the extent of the operations performed by Ebasco for the subsidiary companies of the sub-holding company respondents.

(2) Exhibit 38(a) to 38(t), inclusive

This record of the proceedings in connection with the declaration of Ebasco under Rule U-13-22, described above, establishes the comprehensive nature of the services performed by Ebasco for the subsidiary companies of the sub-holding company respondents, and the nature of the relationships between Ebasco and these subsidiary companies.

(3) Exhibits 68(a), 68(d) and 68(e)

Exhibits 68(a) contains Articles I to XVII, inclusive, of the stipulation of facts in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company, et al., and Exhibits 68(d) and 68(e) are exhibit volumes to said stipulation containing exhibits referred to in Articles XIII, XIV, and XV thereof. Said Articles XIII, XIV and XV and the exhibits referred to therein set forth information concerning the origin and history of the Bond and Share service organization, the nature and extent of the services rendered by Bond and Share to its subsidiary companies prior to November, 1935, the organization of Ebasco and related events, and the nature and extent of the services rend-

ered by Ebasco to the subsidiary companies of Bond and Share subsequent to November, 1935. All this information evidences the all-embracing character of the services rendered originally by the service department of Bond and Share and subsequently by its wholly-owned subsidiary.

(4) Exhibits 39(a) to 39(c), incl., 40(a), 40(b) 41(a), 41(b), 42(a), 42(b), 43(a) to 43(d), incl., 44(a) to 44(c), incl.

These exhibits are the records of the proceedings before this Commission in connection with applications and declarations filed principally under Sections 6 and 7 of the Act by various subsidiaries of National and American. The records of these proceedings establish that financing transactions of the operating subsidiaries are planned, negotiated, and executed by Ebasco and Bond and Share in conjunction with the respective issuing company, and that the sub-holding company respondents play no role in such financing arrangements.

(5) Exhibits 16(a), 17(a), 18(a), 23(a), 24(a), 25(a), 30(a), 31(a), 32(a)

These exhibits comprise portions of the U5B, U5S (1938) and U5S (1939) statements of American, Electric and National, as described above. Item 18 of each such statement sets forth information with respect to the service, sales, and construction contracts of the subsidiary companies of each sub-holding company respondent.

(6) Exhibits 16(n), 17(d), 18(f), 23(l), 24(c), 25(e) and (f), 30(i), 32(d) and (e)

Exhibit H of the U5B, U5S (1938) and U5S (1939) of each sub-holding company respondent sets forth forms

of service, sales, and construction contracts for the subsidiaries of each holding company system.

(7) Exhibits 21, 22, 28, 29(a), (b), 35, and 36

These exhibits comprise the Form 10 and 10-K statements of sub-holding company respondents, as described above. Item 30 of the Form 10 statements and Item 5 of the Form 10-K statements set forth management and service contracts, and changes therein.

(8) Same as (7)

Exhibit F of the Form 10 and 10-K statements of each sub-holding company respondent sets forth copies of management and service contracts, and amendments thereto.

d. The nature and extent of the services which Bond and Share and Ebasco render to the subsidiary companies of the sub-holding company respondents are such as to leave no important services to be performed by the sub-holding company respondents for their subsidiary companies. The sub-holding company respondents do not, in fact, render important services to their subsidiary companies, nor are the sub-holding company respondents equipped to perform any such services.

To establish the foregoing, the following exhibits are relied upon:

(1) All the exhibits cited above under points I-a, b, and c, and in addition:

(2) Exhibit 70

Exhibit 70 contains an analysis of the personnel of each of the sub-holding company respondents which tends to establish, and which when considered in conjunction with the personnel data for Ebasco contained in Exhibits 37 and 38t (referred to above) conclusively estab-

lishes, that these companies are in no manner equipped to furnish services to their subsidiary companies.

e. The continued existence of the sub-holding companies further unduly and unnecessarily complicates the structure of the holding company system because it entails unnecessary and unwarranted expenses of substantial amount.

To establish the foregoing, the following exhibits are relied upon:

(1) Exhibits 63, 64, 65

These exhibits are compilations prepared by the staff of the Commission, analyzing and summarizing the annual expenses of American, Electric and National.

(2) Exhibits 19, 26, 33

These exhibits comprise the U-14-3 statements of American, Electric, and National which set forth detailed information with respect to the operations of the sub-holding company respondents and the expenses in connection therewith.

II

The continued existence of American, Electric, and National causes voting power to be unfairly and inequitably distributed among the security holders of the holding company system of Electric Bond and Share Company in that these companies constitute a pyramiding device whereby the holding company systems of these companies are effectively controlled by Bond and Share through disproportionately small investments, with resulting disfranchisement of public security holders, all as particularized hereinafter:

a. Bond and Share owns securities of the three sub-holding company respondents which have a combined book value in the capitalization accounts of these companies of $104,161,998.45, as compared with a corresponding combined

book value of $487,580,411.48 applicable to securities of these companies held by the public. The foregoing securities owned by Bond and Share are carried as investments on its books at the value of $119,958,455.88, which is $6,230,341 in excess of the cost of the securities to Bond and Share or such other company in the same holding company system as may first have acquired the same. Through the ownership of the foregoing securities of the three sub-holding company respondents and by reason of the distribution of voting power among security holders of said companies, Bond and Share is in a position to control, and does control, said companies.

To establish the foregoing, the following exhibits are relied on:

(1) Exhibit 13

This exhibit is the U5S (1939) statement of Bond and Share. Item 8 thereof sets forth data as to the securities outstanding of the sub-holding company respondents, and as to which of such securities have voting power.

(2) Exhibit 13

Item 9 of the U5S (1939) statement of Bond and Share sets forth the investments of Bond and Share in its subsidiary companies, the "value per books of issuer", the carrying value to Bond and Share, and the "cost to system company originally acquiring security".

(3) Exhibit 13

Exhibit A of the U5S (1939) statement of Bond and Share is a corporate chart showing the relationship of Bond and Share, Ebasco, and the sub-holding company respondents.

(4) Exhibits 18(b), 25(a), 32(a)

These exhibits are portions of the U5S (1939) state-

ments of American, Electric, and National, respectively. Exhibit D of each such statement sets forth consolidating financial statements for the respective holding company systems of the sub-holding company respondents as of December 31, 1939.

(5) Exhibits 16(a), 16(b), 17(a), 18(a), 23(a), to (c), incl., 24(a), 25(a), 30(b), 30(c), 31(a), 32(a)

These exhibits are portions of the U5B and U5S statements of American, Electric, and National, respectively. Exhibit B of each such statement contains copies of articles of incorporation and by-laws, and amendments thereto, which set forth the voting rights and other rights pertaining to each class of stock of the sub-holding company respondents and the companies in their respective holding company systems.

(6) Exhibit 13, 18(b), 25(b), 32(b)

These exhibits are portions of the U5S (1939) statements of Bond and Share, American, Electric, and National, respectively. Exhibit F of each such statement contains copies of annual reports to stockholders of these companies and their subsidiaries. The annual reports of the sub-holding company respondents contain financial statements as of December 31, 1939, both on a corporate basis and a consolidated basis, and set forth the capitalizations of the sub-holding company respondents and the outstanding securities of their respective subsidiaries.

(7) Exhibits 14, 19, 26, 33

These exhibits are the U-14-3 statements of Bond and Share, American, Electric, and National, previously referred to. They set forth corporate financial statements and detailed supporting schedules.

(8) Exhibits 22, 29(b), 36

Item 8 of the Form 10-K statements for 1939 of American, Electric, and National, respectively, sets forth financial statements of these companies as of December 31, 1939 on both a corporate basis and a consolidated basis.

(9) Exhibit 55

This exhibit is a tabulation prepared by the staff of the Commission summarizing the investments of Bond and Share in the securities of the three sub-holding company respondents.

(10) Exhibit 56

This exhibit is a tabulation prepared by the staff of the Commission setting forth the excess of carrying value over cost to the system company originally acquiring the sub-holding company securities now held by Bond and Share.

(11) Exhibits 52, 53, 54

These exhibits are tabulations prepared by the staff of the Commission showing the capitalization and surplus of each sub-holding company respondent, the total votes and percentage of voting power applicable to each class of stock, and the percentage of voting power in each such company applicable to stock held by Bond and Share.

(12) Exhibits 20, 27, 34

These exhibits contain proxy statements filed with the Commission by American, Electric, and National, respectively, which illustrate the practices of these companies with respect to annual meetings of their stockholders and proxy solicitations in connection therewith.

(13) Exhibit 49

This exhibit contains data with respect to the number of shares of stock voted by Bond and Share at the stockholders' meetings of the sub-holding company respondents, the percentage of such shares in relation to total shares voted, and the representation of Bond and Share at such meetings by management proxies.

(14) Exhibits 68(a), (c), (d)

Exhibit 68(a) contains Articles I to XVII, inclusive, of the stipulation of facts in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company et al., previously referred to. Articles V to XV inclusive of said stipulation, and the exhibits referred to therein, contain information with respect to the corporate structures and inter-relationships of the companies of the system, the history and development of the sub-holding company respondents and their subsidiaries, and their relations to Bond and Share both before and after November, 1935. Exhibits 68(c) and 68(d) contain the exhibits referred to in Articles V to XV of Exhibit 68(a).

(15) Exhibit 69

Paragraphs 27 to 47, inclusive, of the answer of the respondents in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company, et al., contain statements with respect to the relations of the sub-holding company respondents and their subsidiaries to Bond and Share.

(16) Exhibits 18(a), 25(a), 32(a)

Item 15 of the U5S (1939) statements of American Electric, and National contains a classification of stockholders according to the size of their holdings and sets forth the number of stockholders within each size classi-

fication and the aggregate number of shares held by them.

b. The three sub-holding company respondents own securities of their subsidiaries which have a combined book value in the capitalization accounts of these subsidiary companies of $537,959,791.94 as compared with a corresponding combined book value of $1,058,740,588 applicable to securities of these companies held by the public and $38,325,666 applicable to securities held by Bond and Share. The foregoing securities owned by the three sub-holding company respondents are carried as investments on their respective books at the combined value of $563,451,202.72. Through the ownership of the foregoing securities of their subsidiary companies and by reason of the distribution of voting power among security holders of such companies, the three sub-holding company respondents constitute a medium whereby Bond and Share is in a position to control, and does control, the holding company systems of the three sub-holding company respondents:

To establish the foregoing, the following exhibits are relied upon:

(1) All the exhibits cited above under point II-a, and in addition:

(2) Exhibits 18(a), 25(a), 32(a)

Item 8 of the U5S (1939) statements of American, Electric, and National sets forth data with respect to the securities outstanding of the sub-holding company respondents and each of their subsidiary companies, and as to which of such securities have voting power.

(3) Exhibits 18(a), 25(a), 32(a)

Item 9 of the U5S (1939) statements of American, Electric, and National sets forth the investments of these companies in securities of their respective subsidiary

companies, the "value per books of issuer", the "carrying value to issuer" and the "cost to system company originally acquiring security".

(4) Exhibits 18(a), 25(a), 32(a)

Exhibit A of the U5S (1939) statements of American, Electric, and National is a corporate chart showing the relationship of the respective sub-holding company respondent to its subsidiary companies.

(5) Exhibits 57, 58, 59, 60

These exhibits are tabulations prepared by the staff of the Commission summarizing the investments of Bond and Share and of the sub-holding company respondents in the securities of subsidiaries of the sub-holding company respondents.

(6) Exhibit 61

This exhibit is a tabulation prepared by the staff of the Commission setting forth the combined consolidated capitalization of American, Electric, and National.

(7) Exhibits 39(a) to 39(c), incl., 40(a), 40(b), 41(a), 41(b), 42(a), 42(b), 43(a) to 43(d), incl. and 44(a) to 44(c), incl.

These exhibits comprise the records of certain financing proceedings before this Commission previously referred to, and throw light upon the relations of Bond and Share with the subsidiary companies of the sub-holding company respondents.

(8) Exhibits 38(a) to 38(t), inclusive

The record of the proceedings in connection with the declaration of Ebasco under Rule U-13-22, previously referred to, throws further light upon the relations of Bond and Share with the subsidiary companies of the sub-holding company respondents.

c. The total investments of Bond and Share in securities of the subsidiaries of the three sub-holding company respondents, substantially all of which investments are in non-voting securities, are carried on its books at the value of $78,058,393.90. This amount includes $28,925,000 which is not included in the capitalization accounts of the issuing company but is carried in current liabilities of that company. The book value in the capitalization accounts of the respective issuing companies of the remaining $49,133,393.90 of investments is $38,325,666.

To establish the foregoing, the following exhibits are relied upon:

(1) Exhibit 57

This exhibit is a tabulation prepared by the staff of the Commission summarizing the investments of Bond and Share in the securities of the subsidiary companies of the sub-holding company respondents.

(2) Exhibit 13

Item 9 of the U5S (1939) statement of Bond and Share sets forth the investments of Bond and Share in the subsidiary companies of the sub-holding company respondents, the "value per books of issuer", the carrying value to Bond and Share, and the "cost to system company originally acquiring security".

(3) Exhibits 13, 18(a), 25(a), 32(a)

Item 8 of the U5S (1939) statements of Bond and Share, American, Electric, and National sets forth data as to the securities outstanding of each such company and its subsidiary companies.

(4) Exhibits 13, 18(b), 25(a), 32(a)

Exhibit D of the U5S (1939) statements of the sub-holding company respondents sets forth consolidating

financial statements for the respective holding company systems of these companies, and Exhibit D of the U5S (1939) statement of Bond and Share sets forth financial statements of Bond and Share, as of December 31, 1939.

(5) Exhibit 14

This exhibit is the U-14-3 statement of Bond and Share, previously referred to. It sets forth corporate financial statements and detailed supporting schedules.

d. The combined consolidated capitalization of the three sub-holding company respondents and their respective subsidiaries equals $1,688,808,664, of which $142,487,664, or 8.4%, is applicable to securities owned by Bond and Share as described in paragraphs (a) and (c) hereof, and $1,546,321,000, or 91.6%, is applicable to securities owned by the public. Of the $142,487,664 referred to above, $103,524,164, or 72.7%, is applicable to voting securities and the balance is applicable to non-voting securities, such voting securities constituting 6.1% of the combined consolidated capitalization of $1,688,808,664. The combined consolidated assets of the three sub-holding company respondents and their respective subsidiaries which are controlled by Bond and Share through ownership of 6.1% of their combined consolidated capitalization are carried on their books at $2,097,855,258.47.

To establish the foregoing, the following exhibits are relied upon:

(1) Exhibit 61

This exhibit is a tabulation prepared by the staff of the Commission setting forth the combined consolidated capitalization of American, Electric, and National.

(2) Exhibits 55 and 57

These exhibits are tabulations prepared by the staff of

the Commission summarizing investments of Bond and Share in securities of the sub-holding company respondents and their subsidiaries.

(3) Exhibit 13

Item 9 of the U5S (1939) statement of Bond and Share sets forth the investment of Bond and Share in system securities, including the "value per books of issuer" and the carrying value to Bond and Share.

(4) Exhibit 14

The U-14-3 statement of Bond and Share sets forth corporate financial statements and detailed supporting schedules.

(5) Exhibits 18(a), 25(a), 32(a)

Item 8 of the U5S (1939) statements of American, Electric, and National sets forth data with respect to the securities outstanding of the sub-holding company respondents and each of their subsidiary companies, and as to voting power thereof.

(6) Exhibits 13, 18(b), 25(a), 32(a)

Exhibit D of the U5S (1939) statements of the sub-holding company respondents sets forth consolidating financial statements for the respective holding company systems of these companies, and Exhibit D of the U5S (1939) statement of Bond and Share sets forth financial statements of Bond and Share, as of December 31, 1939.

(7) Exhibits 13, 18(b), 25(b), 32(b)

Exhibit F of the U5B (1939) statements of Bond and Share, American, Electric, and National contains copies of annual reports to stockholders of these companies and their subsidiaries for the year ended December 31, 1939.

(8) Exhibits 22, 29(b), 36

Item 8 of the Form 10-K statements for 1939 of American, Electric, and National, respectively, sets forth financial statements of these companies as of December 31, 1939, on both a corporate and a consolidated basis.

e. Market values of all classes of outstanding securities of the three sub-holding company respondents of which any portion is owned by Bond and Share were substantially less, throughout the calendar year 1939, than the book values on the books of either the respective issuing company or Bond and Share as described above.

To establish the foregoing, the following exhibits are relied on:

(1) Exhibit 50

This exhibit is a table showing market values during 1939 of the securities of Bond and Share, American Electric, and National.

(2) Exhibit 55

This exhibit sets forth the investments of Bond and Share in securities of the sub-holding company respondents, the value in the capitalization accounts of the respective issuing companies, and the carrying value to Bond and Share.

(3) Exhibit 13

Item 9 of the U5S (1939) statement of Bond and Share shows the investments of Bond and Share in system securities, including the "value per books of issuer" and the carrying value to Bond and Share.

(4) Exhibits 13, 18(a), 25(a), 32(a)

Item 8 of the U5S (1939) statements of Bond and Share, American, Electric, and National sets forth

data as to the securities outstanding of each such company and its subsidiary companies.

(5) Exhibits 13, 18(b), 25(a), 32(a)

Exhibit D of the U5S (1939) statements of the sub-holding company respondents sets forth consolidating financial statements for the respective holding company systems of these companies, and Exhibit D of the U5S (1939) statement of Bond and Share sets forth financial statements of Bond and Share, as of December 31, 1939.

(6) Exhibits 13, 18(b), 25(b), 32(b)

Exhibit F of the U5S (1939) statements of Bond and Share and the sub-holding company respondents contains copies of annual reports to the stockholders of these companies.

(7) Exhibits 14, 19, 26, 33

The U-14-3 statements of Bond and Share and the sub-holding company respondents set forth corporate financial statements and detailed supporting schedules.

(8) Exhibits 22, 29(b), 36

Item 8 of Form 10-K statements for 1939 of American, Electric, and National, respectively, sets forth financial statements of these companies as of December 31, 1939, on both a corporate basis and a consolidated basis.

f. At December 31, 1939, accumulated dividends in arrears on preferred stocks held by the public (excluding Bond and Share) totalled $30,649,066.88 in the case of American and $40,245,655.83 in the case of Electric. In addition, accumulated dividends in arrears on preferred stock of subsidiary companies of American held by the public totalled $8,052,832.11, accumulated dividends in arrears on preferred stocks of subsidiary companies of Elec-

tric held by the public (excluding Bond and Share) totalled $21,151,639.66, and accumulated dividends in arrears on subsidiary companies of National held by the public totalled $341,020.67.

To establish the foregoing, the following exhibits are relied upon:

(1) All the exhibits cited under point II-e, except Exhibit 50, and in addition:

(2) Exhibit 67

This exhibit is a tabulation prepared by the staff of the Commission setting forth accumulated dividend arrearages on preferred stocks of American and Electric as of December 31, 1939, indicating amounts applicable to stocks held by Bond and Share and by the public.

Note—In the foregoing statement, counsel have attempted to refer to each exhibit in connection with each separate topic to which it is relevant and material. However, they expressly reserve the right to cite any such exhibit in connection with any other topic or topics to which it may be relevant and material, or to correct any errors or omissions, but only after notice to respondents and only in such manner that respondents will have opportunity for hearing (including opportunity to present relevant and material evidence) with respect thereto.

All dollar figures in the foregoing statement, except where otherwise specifically designated, are as of December 31, 1939.

GENERAL

The exhibits which have been designated Commission's Exhibits 1 to 70, inclusive, and all parts thereof, whether or not previously referred to in this statement in connection with any specific point bearing upon the "ultimate" issues,

have been placed in evidence and are relied upon by counsel to the Commission to establish—

A. The corporate structure of Bond and Share, American, Electric, and National and the subsidiary companies thereof, the relationships among the companies in the holding company systems of Bond and Share, American, Electric, and National, and the character of the interests thereof and the properties controlled thereby, and

B. The power of Congress to enact, and of the Commission to apply, the provisions of Section 11(b)(2) with respect to the respondents in this proceeding,

with reference both to the issue stated in the Commission's order of June 7, 1940, and to the issues stated in the notice of and order for hearing dated May 9, 1940.

Exhibits 1 to 70, inclusive, are not presently relied upon, however, to establish the affirmative of the issue defined in the Commission's order of June 7, 1940, except to the specific extent, and in the specific manner, stated in the preceding portions of this statement under the caption "Ultimate Issues". Nevertheless, counsel expressly reserve the right to cite any such exhibit or portion thereof, even though not specifically designated in the preceding portions of this statement under the caption "Ultimate Issues", in connection with the issue defined in the Commission's order of June 7, 1940, or any other issue to which it may later appear relevant and material, but only after notice to respondents and only in such manner that respondents will have opportunity for hearing (including opportunity to present relevant and material evidence) with respect thereto.

MILTON H. COHEN,
ALFRED BERMAN,
Counsel to the Commission.

June 29, 1940.

[Document No. 15.]

United States of America

Before the Securities and Exchange Commission

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
Ebasco Services Incorporated,
Respondents.

File No. 59-12.

Reply Statement by Respondent to "Statement by Commission Counsel with Respect to Exhibits Introduced at the Hearings Held on June 18 and 19, 1940."

RESPONDENTS' REPLY STATEMENT.

[Received for Filing July 10, 1940.]

Counsel for respondents received on July 2, 1940, the statement of Commission counsel dated June 29, 1940, and bearing filing mark of the Commission of July 1, 1940, entitled "Statement by Commission Counsel with Respect to Exhibits Introduced at the Hearings Held on June 18 and 19, 1940." We assume that this statement may be taken at the moment as a supplement to the brief filed by Commission counsel in opposition to respondents' motion to dismiss or for alternative relief filed by counsel for respondents on June 22, 1940. It may be intended to serve the further purpose, if so ordered by the Commission, of further definition and identification of the exhibits offered in evidence on behalf of the Commission on June 18th and 19th. However, it does not satisfy the objectives of respondents' motion. It

is, in fact, merely an amplification of the statement of Commission counsel made at pages 173 to 180 of the transcript of record, defining the issues and the conclusions which they draw from the exhibits. It leaves the respondents in the same position as though this statement were not furnished.

Counsel again states, in substance, that he relies on voluminous exhibits to support certain factual conclusions upon which findings determinative of the issues may be made by the Commission.

The present "Statement of Commission Counsel" in effect merely states what these documents or specified portions thereof are offered to prove. In some instances, specific "Items" of certain documents are referred to, but the offer of proof is not limited to these items, and express reservation is made of the right to refer to any other portion of the documents.

We are not able to identify with precision from respondents' records in the New York offices everything that is included in the Commission's exhibits, as the exhibit numbered volumes have been compiled from documents filed with the Commission at various times by respondents and their subsidiaries, such filings having been made separately and not assembled in respondents' offices in corresponding volumes. However, from the best approximate count that we can make, even the exhibits and parts of exhibits now specified by Commission counsel are compiled from 529 separate reports, pamphlets or other documents filed by respondents and their subsidiaries with the Commission, and giving full effect to the limitations to certain "items", comprise a computed total of 43,417 pages.

It is the respondents' contention that they are entitled at this hearing before the Commission to have the specific portions of these voluminous documents that are relied upon identified by offers of proof limited to those specific portions and with sufficient description in the transcript of

record to state what is proven, and connect the proven facts in orderly relation to the issues. If, as is claimed with respect to a number of paragraphs in counsel's statement, that some specific proof is contained in certain "Items" of the documents, as, for example, the description of the business of respondents' subsidiaries, there would seem to be no good reason why this essential matter should not be incorporated in the transcript so that any one reading it would know what was involved and so that respondents when they make their case would neither indulge in useless repetition nor fail to offer any needed supplementary proof.

But in many of the cases there is no limitation of the documents identified to either specific points or specific pages or items of the documents. For illustration, under Paragraph I (a) (15), the Ebasco record in the proceedings under Section 13 of the Act is referred to as containing "information with respect to the operations of the subsidiary utility companies of the three sub-holding company respondents". This record is embraced in 17 volumes of transcript and 112 accompanying exhibits, with an aggregate of 8,811 pages, including both transcript and exhibits. Obviously this description is no limitation at all.

Paragraph I (b) (6) refers to annual reports of holding companies from 1929 to 1938, inclusive, as affording "information with respect to the functions and operations of the sub-holding companies during such years". These comprise 30 volumes with an aggregate of 674 pages. Paragraph I (b) (13) refers to two Form U-1 Statements and four Form U-6B-7 Statements filed by various subsidiary companies in connection with financing. These are said to "establish that the sub-holding companies play no part in arranging for such financing by their subsidiaries". These statements aggregate 7,700 pages.

Paragraphs I (a) (9) identifies "copies of annual reports to stockholders of the companies of each sub-holding company system" without any reference at all to what is proven

thereby, and thus includes 131 annual reports aggregating 1,449 printed pages.

Item I (a) (10) identifies "copies of annual reports to regulatory commissions of the companies of each sub-holding company system" and incorporates in the record 194 such reports, aggregating 17,623 pages.

We might continue with similar description of most of the paragraphs of Commission counsel's statement. Several paragraphs of the statement merely state that voluminous documents "throw light upon the nature and extent of the activities of these companies", or "afford information concerning the operations" of some company, or give "information concerning the general character of the business", or include "statements with respect to the organization history," etc.

In brief, the statement of Commission counsel does not answer the respondents' motion or afford any basis upon which respondents may intelligently proceed in the development of their case.

A further consideration requires comment. An order made by the Commission under Section 11(b)(2) of the Act is expressly made the subject of appeal to the courts and further is not self-executing but may be enforced only by judicial proceedings under Section 11(d) in which the court sits as "a court of equity". In such a proceeding, it would appear that the court has general equity jurisdiction not only over the administration but also over the substance of the plan proposed by the Commission. In either form of proceeding, and certainly on direct appeal, the record upon which the Commission's order is based must be made in such form as will make possible and facilitate judicial review. Certainly the record here proposed to be made by Commission counsel affords no basis at all for such review. Its volume is prohibitive. The procedure adopted by Commission counsel is inconsistent with the fundamentals of due process. *U. S.* v. *Abilene & Southern Railway Co.*, 265

U. S. 274; *Morgan* v. *United States*, 304 U. S. 1; *Crowell* v. *Benson*, 285 U. S 22; cf. also, *Ohio Bell Telephone Company* v. *Commission*, 301 U. S. 292.

We are seeking not to complicate but to simplify the proceeding. It is obvious that what we ask Commission counsel to do must be done at some time before the hearings are concluded and should, in the interest of reaching a speedy conclusion in an orderly manner, be done before respondents start putting in their testimony. If not done by counsel for the Commission, respondents must, in order to adequately protect their interests, have time to go through the great mass of exhibits introduced by Commission counsel, to make sure that all important portions of them are met by evidence by respondents. To do this would obviously require a great deal of time, and the hearings could not properly be resumed for many weeks—or even for many months. Certainly due process would require that respondents be given time to examine the evidence to be used against them before being required to put in their own evidence. The fact that respondents are familiar with the material of the exhibits does not limit the necessity of such examination. The relation of the particular portions of the exhibits relied on by Commission's counsel to the issues here raised must be scrutinized and weighed.

It is probable that certain of the material which is included in these exhibits may be required by both parties in the making of an adequate record for Commission action and possible eventual Court review. It is probable that other exhibits are offered merely to establish some factual conclusion which will not be disputed. It is suggested that both time and expense might be saved if counsel for respondents and the Commission would agree, so far as possible, on the facts established by these exhibits, embodying in the agreement such portions of the exhibits as might be required by either party, and embrace their agreement in a stipulation which would dispense with the great bulk of

this exhibit material. Counsel for respondents would be willing to cooperate with Commission counsel to that end.

Respondents rely upon their motion and renew their request for oral argument thereon.

Dated, July 9, 1940.

Respectfully submitted,

SIMPSON THACHER & BARTLETT,
By JOHN F. MACLANE,
A member of said firm,
Office and Post Office Address,
120 Broadway, New York, N. Y.

REID & PRIEST,
By FRANK A. REID,
A member of said firm,
Office and Post Office Address,
2 Rector Street, New York, N. Y.
Attorneys for Respondents.

[DOCUMENT No. 19.]

SECURITIES AND EXCHANGE COMMISSION WASHINGTON

Reg. No. 977119 through 977123 Docket Unit

In the Matter of

Electric Bond and Share Company
American Power & Light Company
Pacific Power & Light Company
Electric Power & Light Corporation
Utah Power & Light Company
National Power & Light Company
Ebasco Services Incorporated
Respondents

File No. 59-12

Public Utility Holding Company Act of 1935
Section 11 (b) (2)

OPINION OF THE COMMISSION

June 30, 1940.

Appearances:

Milton H. Cohen, Esq., and Alfred Berman, Esq., for the Public Utilities Division of the Commission.

Simpson Thacher & Bartlett by John F. MacLane, Esq., and Reid & Priest by Frank A. Reid, Esq., for the respondents.

This proceeding was commenced by the Commission under Section 11 (b) (2) of the Public Utility Holding Company Act of 1935. The order for hearing states that the Commission has reasonable grounds to believe that:

"46. The structure of the holding company system of said Electric Bond and Share Company is unduly and unnecessarily complicated:

"47. Voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company.

"48. Said Electric Bond and Share Company is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies."

At the current stage of the proceeding the issues are limited by the Commission's orders of June 7 and June 17 to a determination of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company "in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated, and that voting power shall not be unfairly or inequitably distributed among security holders of such system".

The hearing was commenced before a trial examiner on June 17 and continued on June 18 and 19. At the hearing, counsel for the Public Utilities Division offered and there was received in evidence, subject to certain reservations and limitations, a series of 70 exhibits. These exhibits consist of some 130 volumes, and include various registration statements, declarations with respect to security issues, annual reports and proxy statements filed with the Commission during the last three years by the respondents and certain of their subsidiaries. Included also is the record of the proceeding before the Commission in which Ebasco Services Incorporated, one of the respondents herein, is seeking approval as a subsidiary service company under Section 13 of the Act. There is also included the stipulation of facts and the pleading in the case of *Securities and Exchange Commission* v. *Electric Bond and Share Company et al.*, 303 U. S. 419 (1938).

In making his offer, counsel for the Public Utilities Division made a statement as to the contents of the exhibits offered, the issues in the proceeding, and his contentions, and stated in general terms the manner in which and the extent to which he believed the exhibits served to establish these contentions. After all of the proffered exhibits were received, counsel stated that he believed that he had gone forward with the proof as far as was required and urged that the evidence introduced *prima facie* established the affirmative of the issues framed in the Commission's orders of June 7 and June 17.

Counsel for the respondents thereupon made a statement which has been embodied in the motions now before us. While one of these motions is, in form, a motion to dismiss, it is clear from the briefs and argument that the substantial relief requested is—

"that Commission counsel be directed, prior to the in-

troduction of any evidence by Respondents, to withdraw his submission or 'rest' of his case, and to specifically identify those parts of the documents offered by him as exhibits which he will accept and upon which he relies as evidence, and that he offer such further evidence, oral or documentary, as may be required to apprise these Respondents of the facts which the Commission counsel contends, or will contend, establish the ultimate issues herein. . . ."

In their main brief, respondents contended that the offers of evidence—

"are so restricted and limited that, except as supplemented by further identification and if necessary by oral testimony, they do not constitute evidence sufficient either to support the contentions made or to require or even permit answering testimony by Respondents, that the record is so vague and uncertain that Respondents are not given the notice required by the dictates of due process or orderly quasi judicial procedure, and that, in consequence, the proceeding should be dismissed unless Commission counsel will supply what Respondents conceive to be the present deficiencies in the record."

After the filing of this brief, counsel for the Public Utilities Division served and filed a 27-page document entitled "Statement by Commission Counsel With Respect to Exhibits Introduced at the Hearings Held on June 18 and 19, 1940". This statement sets forth in detail the contentions of counsel and refers to the various exhibits or portions of such exhibits which it is alleged support each of the contentions made to prove the major issues. Counsel for the respondents filed a reply to this statement and we heard argument on July 12.

At the outset it should be noted that no objection to the competency or relevancy of any particular exhibit is now before us. The only question to be determined is whether the offer of proof is sufficiently explicit adequately to apprise respondents of the contentions made by counsel for the Public Utilities Division and the evidence relied upon in support of the facts considered to be established.

We think there is considerable force in respondents' argument as applied to the procedure followed at the hearing. Without deciding whether as a matter of law in the absence of an objection on the ground of relevancy, such exhibits would have to be excluded as improperly offered, this Commission, in the exercise of its powers to insure orderly proceeding in cases before it, believes such a volume of material should not be accepted unless some reasonable indication is given of the relationship between the evidence offered and the facts sought to be proved thereby. Mass offers and mass conclusions without some such specification are conducive neither to efficient administration nor orderly proceedings in that they invite dispute, put a premium on suprise, and open the doors to speculation and conjecture. That mode of procedure, moreover, casts upon the opponent the burden of distributing the probative force of the evidence among the facts contended to be established, a task more properly borne by the proponent who is assumed to know by what evidence he claims to prove each fact he asserts to be in issue.

But whatever may have been the situation when this motion was noticed, the supplemental written statement filed by counsel for the Public Utilities Division, insofar as it relates each fact claimed to have been established to the specific exhibits or portions of exhibits relied upon, is, in our opinion, entirely adequate to apprise respondents both of the contentions of counsel for the Public Utilities Divi-

sion and the evidence offered in support of each contention.[1] With respect to the evidence specifically identified under the two principal issues, the Statement expressly limits counsel for the Public Utilities Division in that they are bound to

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[1] This Statement is drafted on the basis of the ultimate issues framed in the orders of June 7 and June 17. Under the first issue —whether the continued existence of the sub-holding companies, American Power & Light, Electric Power & Light, and National Power & Light, unduly and unnecessarily complicate the structure of the Bond and Share system—counsel assert that these companies neither perform nor are equipped to perform any necessary functions but cause unnecessary and unwarranted expense. To prove this point, counsel contend that all operations are carried on exclusively by the subsidiary companies, and indicate, by exhibit number and in most cases by reference to specific items in such exhibits, the evidence upon which they rely to establish the nature and activities of the subsidiary companies. Similar specification is made with respect to the evidence which it is alleged supports the contention that the three sub-holding companies do no more than exercise voting rights, receive interest and dividends, and service their securities, and establishes the nature and activities of these companies. Again to prove the ultimate issue, counsel contend that all service, sales, and construction contracts for the subsidiary companies are performed exclusively by Ebasco and that the nature of the services of Ebasco and Bond and Share are such as to leave no important services to be performed by the three sub-holding companies, and specify the particular exhibits or portions of exhibits relied upon to establish the nature and activities of Ebasco and of the three sub-holding companies. Finally, there are listed the exhibits which it is contended demonstrate that the existence of the sub-holding companies entails unnecessary and unwarranted expense.

Similar specifications are made under various subdivisions of the second ultimate issue—whether the continued existence of the sub-holding companies causes voting power to be unfairly and inequitably distributed among the security holders of the Bond and Share system.

Respondents point out that certain of the specifications in the Statement are to exhibits which, in some cases, consist of several volumes. The principal example is Exhibit 38, the record in the Ebasco proceeding. The Statement indicates that this record is offered to show the functions performed by and the services rendered to subsidiary companies by Ebasco. The Ebasco proceeding involved that precise issue and, presumably, the 22 volumes of that record represent the evidence which Ebasco's counsel believed was most relevant to that question. Accordingly, we see nothing improper in offering the entire record to support the identical facts

use the documents offered and portions thereof only in accordance with such specifications. However, the Statement includes references to certain exhibits which, we think, have not been sufficiently related to the facts sought to be proved thereby. Reference is made under the two principal issues to Exhibits 39, 40, 41, 42, 43, and 44, each of which constitutes the entire record in a proceeding before the Commission in connection with an application or declaration by certain of respondents' operating subsidiaries under Sections 6 and 7 of the Act. These exhibits, consisting of some 16 volumes were introduced for the purpose of showing (1) that the sub-holding companies play no part in the financing of their operating subsidiaries, and (2) that the financing transactions of the operating subsidiaries are planned, negotiated, and executed by Ebasco and Bond and Share. These records would, of necessity, include much material unrelated to the issues in this case, and no attempt has been made to identify the portions of these exhibits upon which counsel for the Public Utilities Division wish to rely. The Statement also includes a general reservation that, after notice to respondents, all documents specified may be used for other purposes and that all 70 exhibits may be used to prove the corporate structure of the Bond and Share system, and to support the power of Congress to enact Section 11 (b) (2).

We think that the references to the Sections 6 and 7 applications and declarations are not sufficiently specified and

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which Ebasco set out to prove in building up this record. It is to be hoped that counsel for the company and for the Public Utilities Division will find some way to condense the substance of these volumes before the matter reaches final argument.

It is clear from the Statement and the briefs and oral argument of counsel for the Public Utilities Division that they have repudiated the reservation originally stated at the hearing of the right to object to the relevancy and materiality of the documents offered by them. We need not, therefore, discuss the reservation.

that the general reservation is improper and imposes a burden upon the respondents which should be obviated. Accordingly, with respect to these two matters, we shall grant the relief requested and, unless further specification is made, we shall consider, and we direct the trial examiner to treat, as evidence in the record only the documents as to which we have found that sufficiently specific reference is made under the two principal headings of the Statement.[1] Either counsel may, of course, offer any of the excluded material at any time during the hearing upon a proper showing of its relation to the issues in the case.

Finally, if respondents feel that they have been surprised by the use of the exhibits in some way contrary to their understanding of the reservations, they may, of course, at any time, apply to reopen the record, or for such other relief as may be appropriate.

We are entirely sympathetic to respondents' suggestion of the further difficulties occasioned by the introduction of so large a mass of documents which will make for a voluminous record in our ultimate consideration of this matter and in possible court review. Some progress will have been made toward narrowing the record in our disposition of this motion; we are hopeful that additional progress will be made without our further intervention. In any event, at the conclusion of the hearing, in our final consideration of the case, we shall entertain such motions to strike irrelevant and cumulative evidence from the record as counsel may see fit to present. Moreover, if we then find that the record is so unwieldy as to be an unintelligible guide to the facts either for our own consideration or for the consideration of a court on any possible review, we will direct counsel to reduce its size by the use of stipulation or otherwise.

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[1] Of course we are not now deciding whether such documents are relevant in this proceeding. That issue is still open.

Nothing in this opinion is to be construed as, in any way, reflecting our views with respect to the resolution of the substantive issues in the case.

An order will issue in accordance with this opinion.

By the COMMISSION, Commissioners HENDERSON and PIKE not participating.

UNITED STATES OF AMERICA

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 30th day of July, A. D., 1940.

In the Matter of

Electric Bond and Share Company
American Power & Light Company
Pacific Power & Light Company
Electric Power & Light Corporation
Utah Power & Light Company
National Power & Light Company
Ebasco Services Incorporated

Respondents

File No. 59-12

Public Utility Holding Company Act of 1935—
Section 11 (b) (2)

ORDER.

Whereas, the Commission issued a notice and order for hearing on May 9, 1940, instituting this proceeding pursuant to Section 11 (b) (2) of the Public Utility Holding Company Act of 1935, and supplementary orders on June 7 and June 17, 1940; and

Whereas counsel for the Public Utilities Division introduced certain evidence at such hearing; and

Whereas, respondents have filed certain motions that counsel for the Public Utilities Division be directed to identify specifically those portions of the documents offered by him upon which he relies as evidence in such manner that respondents may be apprised of the facts which he contends, or will contend, establish the ultimate issues; and

Whereas, counsel for the Public Utilities Division has submitted a written Statement further specifying the particular exhibits or portions of exhibits relied upon to prove the facts which he contends establish the ultimate issues; and

Counsel for the respondents and for the Public Utilities Division having filed briefs and presented oral argument, and the Commission being fully advised in the premises and having this day filed its Opinion with respect to respondents' motions;

It is ordered that said motions are granted in the respects indicated in said Opinion and in all other respects are denied.

By the Commission.

FRANCIS P. BRASSOR, *Secretary.*

[Document No. 25.]

United States of America

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 13th day of August, A. D., 1940.

Reg. No. 977604, 977605, 977685-977687

In the Matter of

Electric Bond and Share Company
American Power & Light Company
Pacific Power & Light Company

Electric Power & Light Corporation
Utah Power & Light Company
National Power & Light Company
Ebasco Services Incorporated
Respondents

File No. 59-12

Public Utility Holding Company Act of 1935—
Section 11 (b) (2)

MEMORANDUM OPINION AND ORDER.

August 16, 1940.

Appearances:

Milton H. Cohen, Esq., and Alfred Berman, Esq., for the Public Utilities Division of the Commission.

Simpson Thacher & Bartlett by John F. MacLane, Esq., and Reid & Priest by Frank A. Reid, Esq., for the respondents.

This case is now before us on the respondents' request for a continuance of the hearing.

The proceeding was instituted by the Commission under Section 11(b)(2) of the Public Utility Holding Company Act of 1935 by order dated May 9, 1940. The hearing was commenced before a trial examiner on June 18, and continued on June 19. At the hearing counsel for the Public Utilities Division offered numerous exhibits in evidence and, after such exhibits were received, stated that he believed that he had gone forward with the proof as far as was required, and urged that the evidence introduced *prima facie* established the affirmative of the issues in the case. Respondents thereupon made certain motions requesting that counsel for the Public Utilities Division be directed to identify specifically the portions of the documents offered upon which he relied as evidence in such manner that respondents might be apprised of the facts which he con-

tended, or would contend, established the ultimate issues. The hearing was adjourned pending our disposition of these motions. On July 30 we issued an opinion and order, in part granting and in part denying the motions (Holding Company Act Release No. 2196), and we ordered that the hearing be resumed on August 12.

On August 12, when the hearing was reconvened, respondents were apparently not prepared to proceed with the presentation of their evidence although more than three months had elapsed since the issuance of the order instituting the proceeding. Counsel have requested a continuance to September 9, and have stated that such a continuance is necessary, first, to formulate objections on the grounds of relevancy to certain of the documentary evidence in the record[1] and, second, for the further preparation of respondents' case. At the argument before us, in response to a question put by the chairman, counsel for the respondents stated that if the requested continuance were granted, respondents would be prepared on the resumption of the hearing to go forward continuously with their presentation, subject only to any necessary short recesses, and that respondents would make no further request for any major continuance. On this understanding, we will grant the requested continuance and we hereby order that the hearing be adjourned to be resumed at 10 A.M. on September 9, 1940, at Room 1102 of the Commission's Washington office.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

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[1] We understand from counsel's statement that such objections, whether made in the form of motions or otherwise, are to be made for record purposes, and that counsel neither expects nor desires the Commission to pass upon such motions until the conclusion of the hearing.

[Document No. 26.]

United States of America

Before the Securities and Exchange Commission

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
Ebasco Services Incorporated,
Respondents

File No. 59-12.

MOTION TO DISMISS.

[Received for Filing September 9, 1940.]

This proceeding having been instituted by the Commission pursuant to "Notice of and Order for hearing pursuant to Section 11 (b) (2) of the Public Utility Holding Company Act of 1935", dated May 9, 1940, and introduced in evidence herein as Commission Exhibit No. 1 (hereinafter referred to as "notice and order"); and

The Commission by its order dated June 7, 1940, introduced in evidence as Commission Exhibit No. 5, having ordered that the hearing herein "shall be limited initially to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American & Foreign Power Company Inc., or any of them, in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting

power shall not be unfairly or inequitably distributed among security holders of such system";

And the Commission by further order dated June 17, 1940, introduced in evidence herein as Commission Exhibit No. 10, having dismissed American & Foreign Power Company Inc., as a party to these proceedings;

And Commission counsel having offered and introduced its testimony in support of the issues tendered on the Commission's behalf and having announced that they rested the Commission's case;

The said Respondents, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, jointly and severally move to dismiss said "notice and order" (Exhibit No. 1) in so far as it affects said respondents or any of them, and move to dismiss this proceeding as against said respondents on the following grounds, to wit:

Part I.

1. Respondents, pursuant to and in reliance on Rule 4 of the Rules and Regulations of the Securities and Exchange Commission (hereinafter called "Commission") promulgated pursuant to Section 20 of the Act, expressly reserve and refuse to waive any constitutional or legal rights, and expressly reserve the right to contest the constitutionality of any provision of the Act as applied to them or any of them, or of any rule, regulation or order now or hereafter made or purported to be made thereunder.

2. The Commission is without jurisdiction to proceed further under said notice and order, or otherwise under said Section 11(b)(2) of said Act, and the proceedings thereunder ought to be dismissed because Section 11(b)(2) of said Act is unconstitutional and void, and any enforcement thereof by the Commission would deprive respondents, and each of them as to which such enforcement should be ap-

plied, of their rights under the Constitution of the United States in that,

(a) Said Section 11(b)(2) is not a regulation of commerce, nor on the subject of bankruptcies, nor for the establishment of post offices and post roads, within the meaning of the applicable clauses of Article I, Section 8, of the Constitution of the United States, and is not within any other power vested in the Congress by said Constitution, but is an invasion of the powers reserved to the states or the people within the meaning of Article X of the amendments to the Constitution of the United States in that it seeks to interfere with and control corporations established under State laws, the exercise by them of their charter powers, and the distribution of voting power among security holders in corporations created under and governed by the laws of the various states;

(b) The enforcement of said Section 11(b)(2) or of any order made by the Commission thereunder, which would require elimination of, or a change in corporate structure of, any company in the system, or redistribution of voting power among security holders, will deprive respondents of property without due process of law in violation of Article V of the Amendments to the Constitution of the United States;

(c) Said Section 11(b)(2) delegates to the Commission legislative power of the Congress in violation of Article I, Sections 1 and 8, of the Constitution of the United States in that it affords no guide or standard or definition for the determination of what form of corporate structure may be approved by the Commission on the one hand, or held by it on the other hand to unduly or unnecessarily complicate the structure of a holding company system, or what is a fair or equitable distribution of voting power among security holders,

but entrusts such determination to the unlimited discretion of the Commission. The words used are not referable to any grant of federal power and are merely an unlimited grant of power to the Commission to make such alterations or changes in corporate structure or distribution of voting power among security holders as the Commission may deem appropriate;

(d) The Section purports to authorize abrogation and restatement of contract rights among security holders of companies not made parties respondent, and of security holders of respondent companies in proceedings to which such security holders are not parties, or capable of being made parties, and its application and enforcement would deprive such non-respondent companies and security holders of property without due process of law, in violation of Article V of the Amendments to the Constitution of the United States.

3. If, notwithstanding the foregoing, the said Section 11(b)(2) may be constitutionally applied, it may be so applied only (a) in the administration of a constitutional grant of power to the Commission to regulate corporations engaged in interstate commerce, and then only in so far as its application may constitute a regulation of interstate commerce within the powers granted to the Congress under the provisions of Article I, Section 8, of the Constitution of the United States, and none of the respondents, nor any of their subsidiaries, is either in its corporate existence or structure or in the distribution of voting rights of its security holders within the orbit of such power; (b) in the administration and exercise of the bankruptcy powers conferred upon the Congress by Article I, Section 8, of the Constitution of the United States, and none of the respondents or their subsidiaries are either insolvent or bankrupt or subject to such bankruptcy powers; or (c) as auxiliary to

a valid order made by the Commission under Section 11 (b)(1) of the Act (if said Section be constitutional, which respondents deny), after or in connection with the making of a valid order under said Section 11(b)(1) which to be effectually carried out requires a revamping of corporate structure or the elimination of some company or redistribution of voting power among security holders to effectuate the purposes of said Section 11(b)(1).

4. For the reasons, among others, stated in paragraph 3(c), *supra,* the Commission is without power to proceed with hearing in this proceeding, except after the completion of, or as auxiliary to, or in conjunction with, its proceeding under Section 11(b)(1) (File No. 59-3) now pending before the Commission. Furthermore, either completion of hearings in said File No. 59-3, or consolidation of these proceedings with those in said File No. 59-3, is essential to avoid unnecessary repetition or duplication of evidence, and to a systematic and orderly preparation and presentation of the facts involved. Until the public utility companies and properties and non-utility subsidiaries that may be permitted to remain in the System are determined under Section 11(b)(1), simplification of corporate structure or redistribution of voting power among security holders cannot be properly or intelligently applied under Section 11(b)(2). It is further essential that as preliminary to the determination of any of the questions involved in this proceeding the status of American Gas and Electric Company and its subsidiaries with respect to Bond and Share and its System be determined upon said company's application under Section 2(a)(8) which said application and the effect thereof is described in paragraph 43 of said notice and order.

5. The notice and order is defective for want of necessary parties, in that subsidiary companies of the respondents named in said notice and order and whose position and voting rights of whose securities in the System must neces-

sarily be considered and affected are not made parties; and further in that security holders of the companies affected whose rights must necessarily be involved are likewise not made parties.

6. Any effective order of the Commission redistributing voting rights of security holders of any Company in the System must of necessity affect contract and property rights of individual and corporate holders of such securities, and cannot be made in a proceeding to which said security holders are not parties.

7. Said notice and order, after describing in general terms the companies stated to constitute the Electric Bond and Share Company System, alleges in Part IX, paragraphs 46 to 48 thereof, merely in general terms (par. 46) that the structure of said System is "unduly and unnecessarily complicated"; that (par. 47) "voting power is unfairly and inequitably distributed"; and that (par. 48) said Electric Bond and Share Company "is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies". Said notice and order contains no allegations or specifications supporting the said paragraphs 46, 47 and 48, no detail is alleged specifying in what companies, or in what respects, or in what manners, the corporate structure of the System is complicated, or voting power unfairly or inequitably distributed, fails to take into consideration the legal and economic evolution of the Bond and Share System whereby security-holders' rights became vested, and is so vague and uncertain that respondents cannot intelligently answer or proceed to hearing thereon. Such vague and indefinite allegations are not adequate notice of the proceedings to be taken by the Commission within the requirements of the due process clause of Article V of the Amendments to the Constitution of the United States, and do not satisfy the requirements of Section 11 of the said Act in that the Com-

mission has not made the examination and investigation contemplated by Section 11(a), and no valid order, such as contemplated by Section 11(b)(2), may be predicated upon said notice and order, or as a result of any hearing held thereunder.

For the reasons above stated, the Commission ought not to proceed further, the respondents should not be required to respond to said notice and order, and these proceedings should be dismissed.

Subject to the said reservation of constitutional rights and specifications of unconstitutionality, and objections above made, the respondents jointly and severally further move to dismiss said notice and order for the following reasons, to wit:

Part II.

8. The evidence offered by Commission counsel fails to establish the allegations of the Commission's notice and order contained in paragraphs 46 and 47 thereof that "the structure of the holding company system of said Electric Bond and Share Company system is unduly and unnecessarily complicated" and that "voting power is unfairly and inequitably distributed among security holders of the holding company system of said Electric Bond and Share Company".

9. The evidence offered by Commission counsel fails to establish the issue tendered by the said order of June 7, 1940, that it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, or any of them, in order to insure that the structure of the holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated, or that voting power shall not be unfairly or inequitably distributed among security holders of such systems.

10. The evidence offered by Commission counsel merely tends to establish the existence of a certain intercorporate structure and the distribution of voting power in such structure and no evidence is offered to show that such structure is unduly or unnecessarily complicated or that voting power is unfairly or inequitably distributed among security holders.

11. The exhibits offered in evidence by Commission counsel show affirmatively that respondents, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company were lawfully incorporated in accordance with the laws of the states of their incorporation, that the voting power pertaining to the various securities issued by said companies was established and determined in accordance with the laws of the states of incorporation and the charters and by-laws of said companies adopted pursuant to said laws, and that valid, legal contract rights were vested in the various security holders of said companies. Any destruction or impairment of said contract rights is beyond the powers of the Commission and would constitute deprivation of the property rights of the holders of said securities, in violation of the Fifth Amendment to the Constitution of the United States.

12. The evidence further shows that these respondents are essential component parts of the Electric Bond and Share Company system and that without them said system would cease to exist.

13. No program or plan is offered by Commission counsel, and the evidence fails to disclose any program or plan by which the termination of the existence of these respondents could be accomplished either without destruction of the holding company system of Electric Bond and Share Company, or in such manner as to protect and preserve the rights of investors and consumers.

Wherefore these respondents move for dismissal of said notice and order and of all proceedings thereunder as effecting them.

Respectively submitted,

SIMPSON THACHER & BARTLETT,
by JOHN F. MACLANE

REID & PRIEST
by FRANK A. REID

Attorneys for Respondents
AMERICAN POWER & LIGHT COMPANY
ELECTRIC POWER & LIGHT CORPORATION
NATIONAL POWER & LIGHT COMPANY

Dated September , 1940.

[DOCUMENT No. 27.]

UNITED STATES OF AMERICA

Before the Securities and Exchange Commission

In the Matter of

Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
Ebasco Services Incorporated,
Respondents

File No. 59-12.

AMENDED ANSWER.

[Received for Filing September 9, 1940.]

Electric Bond and Share Company and the other companies above named, respondents in the "Notice of and Order for hearing pursuant to Section 11(b)(2) of the Public

Utility Holding Company Act of 1935" (said "Notice and Order", etc., is hereinafter called "Notice and Order" and said Public Utility Holding Company Act is hereinafter called "Act"), jointly and severally respond and make answer to said "Notice and Order" as follows:

This answer is submitted with respect to the above described notice and order, although not required thereby, as a statement of the above named respondents' legal position on the matters stated in said notice and order, and also for the purpose of clarifying certain factual issues to be determined upon hearing to be held pursuant thereto.

The term "System" as used herein with respect to Electric Bond and Share Company or other groups of utility properties, as well as other terms defined in the Act, except where the context otherwise requires, are used as a matter of convenience only; and any admissions, or failure to deny, statements in the notice and order, or other use of said terms herein or therein, are not to be construed as an assertion or admission of any legal implications which may be drawn from the use thereof herein or in said notice and order or of any specific corporate ownerships or intercorporate relationships. This answer is made without prejudice to the submission from time to time of complete or partial programs looking to voluntary adjustments of inter or intra corporate relationships which may meet with Commission approval and render determination of specific legal or factual issues unnecessary. Any such submission of voluntary programs is likewise without prejudice to the legal positions herein asserted.

Part I.

1. Respondents, pursuant to and in reliance on Rule 4 of the Rules and Regulations of the Securities and Exchange Commission (hereinafter called "Commission") promulgated pursuant to Section 20 of the Act, expressly reserve

and refuse to waive any constitutional or legal rights, and expressly reserve the right to contest the constitutionality of any provision of the Act as applied to them or any of them, or of any rule, regulation or order now or hereafter made or purported to be made thereunder.

2. The Commission is without jurisdiction to proceed further under said notice and order, or otherwise under said Section 11(b)(2) of said Act, and the proceedings thereunder ought to be dismissed because Section 11(b)(2) of said Act is unconstitutional and void, and any enforcement thereof by the Commission would deprive respondents, and each of them as to which such enforcement should be applied, of their rights under the Constitution of the United States in that,

(a) Said Section 11(b)(2) is not a regulation of commerce, nor on the subject of bankruptcies, nor for the establishment of post offices and post roads, within the meaning of the applicable clauses of Article I, Section 8, of the Constitution of the United States, and is not within any other power vested in the Congress by said Constitution, but is an invasion of the powers reserved to the states or the people within the meaning of Article X of the amendments to the Constitution of the United States in that it seeks to interfere with and control corporations established under State laws, the exercise by them of their charter powers, and the distribution of voting power among security holders in corporations created under and governed by the laws of the various states;

(b) The enforcement of said Section 11(b)(2) or of any order made by the Commission thereunder, which would require elimination of, or a change in corporate structure of, any company in the system, or redistribution of voting power among security holders, will de-

prive respondents of property without due process of law in violation of Article V of the Amendments to the Constitution of the United States;

(c) Said Section 11(b)(2) delegates to the Commission legislative power of the Congress in violation of Article I, Sections 1 and 8, of the Constitution of the United States in that it affords no guide or standard or definition for the determination of what form of corporate structure may be approved by the Commission on the one hand, or held by it on the other hand to unduly or unnecessarily complicate the structure of a holding company system, or what is a fair or equitable distribution of voting power among security holders, but entrusts such determination to the unlimited discretion of the Commission. The words used are not referable to any grant of federal power and are merely an unlimited grant of power to the Commission to make such alterations or changes in corporate structure or distribution of voting power among security holders as the Commission may deem appropriate;

(d) The Section purports to authorize abrogation and restatement of contract rights among security holders of companies not made parties respondent, and of security holders of respondent companies in proceedings to which such security holders are not parties, or capable of being made parties, and its application and enforcement would deprive such non-respondent companies and security holders of property without due process of law, in violation of Article V of the Amendments to the Constitution of the United States.

3. If, nothwithstanding the foregoing, the said Section 11(b)(2) may be constitutionally applied, it may be so applied only (a) in the administration of a constitutional grant of power to the Commission to regulate corporations

engaged in interstate commerce, and then only in so far as its application may constitute a regulation of interstate commerce within the powers granted to the Congress under the provisions of Article I, Section 8, of the Constitution of the United States, and none of the respondents, nor any of their subsidiaries, is either in its corporate existence or structure or in the distribution of voting rights of its security holders within the orbit of such power; (b) in the administration and exercise of the bankruptcy powers conferred upon the Congress by Article I, Section 8, of the Constitution of the United States, and none of the respondents or their subsidiaries are either insolvent or bankrupt or subject to such bankruptcy powers; or (c) as auxiliary to a valid order made by the Commission under Section 11 (b)(1) of the Act (if said Section be constitutional, which respondents deny), after or in connection with the making of a valid order under said Section 11(b)(1) which to be effectually carried out requires a revamping of corporate structure or the elimination of some company or redistribution of voting power among security holders to effectuate the purposes of said Section 11(b)(1).

4. For the reasons, among others, stated in paragraph 3(c), *supra*, the Commission is without power to proceed with hearing in this proceeding, except after the completion of, or as auxiliary to, or in conjunction with, is proceeding under Section 11(b)(1) (File No. 59-3) now pending before the Commission. Furthermore, either completion of hearings in said File No. 59-3, or consolidation of these proceedings with those in said File No. 59-3, is essential to avoid unnecessary repetition or duplication of evidence, and to a systematic and orderly preparation and presentation of the facts involved. Until the public utility companies and properties and non-utility subsidiaries that may be permitted to remain in the System are determined under Section 11(b)(1), simplification of corporate structure or

redistribution of voting power among security holders cannot be properly or intelligently applied under Section 11 (b)(2). It is further essential that as preliminary to the determination of any of the questions involved in this proceeding the status of American Gas and Electric Company and its subsidiaries with respect to Bond and Share and its System be determined upon said company's application under Section 2(a)(8) which said application and the effect thereof is described in paragraph 43 of said notice and order.

5. The notice and order is defective for want of necessary parties, in that subsidiary companies of the respondents named in said notice and order and whose position and voting rights of whose securities in the System must necessarily be considered and affected are not made parties; and further in that security holders of the companies affected whose rights must necessarily be involved are likewise not made parties.

6. Any effective order of the Commission redistributing voting rights of security holders of any company in the System must of necessity affect contract and property rights of individual and corporate holders of such securities, and cannot be made in a proceeding to which said security holders are not parties.

7. Said notice and order, after describing in general terms the companies stated to constitute the Electric Bond and Share Company System, alleges in Part IX, paragraphs 46 to 48 thereof, merely in general terms (par. 46) that the structure of said System is "unduly and unnecessarily complicated"; that (par. 47) "voting power is unfairly and inequitably distributed"; and that (par. 48) said Electric Bond and Share Company "is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies". Said notice and order contains no allegations or specifica-

tions supporting the said paragraphs 46, 47 and 48, no detail is alleged specifying in what companies, or in what respects, or in what manners, the corporate structure of the System is complicated, or voting power unfairly or inequitably distributed, fails to take into consideration the legal and economic evolution of the Bond and Share System whereby security-holders' rights became vested, and is so vague and uncertain that respondents cannot intelligently answer or proceed to hearing thereon. Such vague and indefinite allegations are not adequate notice of the proceedings to be taken by the Commission within the requirements of the due process clause of Article V of the Amendments to the Constitution of the United States, and do not satisfy the requirements of Section 11 of the said Act in that the Commission has not made the examination and investigation contemplated by Section 11(a), and no valid order, such as contemplated by Section 11(b)(2), may be predicated upon said notice and order, or as a result of any hearing held thereunder.

For the reasons above stated, the Commission ought not to proceed further, the respondents should not be required to respond to said notice and order, and these proceedings should be dismissed.

Subject to the said reservation of constitutional rights and specifications of unconstitutionality, and objections above made, the respondents jointly and severally answer said notice and order as follows:

Part II

For a first defense:

8. Electric Bond and Share Company (hereinafter called "Bond and Share") admits, except as hereinafter denied or qualified, the allegations of Part I, paragraphs 1 to 8, inclusive, of the Commission's "notice and order".

Referring to paragraph 3, the descriptions of stocks of

Bond and Share issued and outstanding therein contained are in all respects subject to the provisions of the statutes pursuant to which the same were issued and to the provisions of its charter, by-laws and other related corporate documents. Further referring to the statement of paragraph 3 that "no dividends in cash have been declared or paid on the common stock (of Bond and Share) since organization of the present company in 1929" this respondent states that said organization was a consolidation or merger under the New York statutes of (old) Electric Bond and Share Company, a New York corporation organized in 1905, with its then parent company, Electric Bond and Share Securities Corporation, and that prior to such consolidation or merger full cash dividends on preferred stock had been regularly paid since the original issue of such stock and cash dividends on common stock had been regularly paid by said (old) Electric Bond and Share Company to said parent company, and by said parent company to the public for several years.

With respect to the statements of paragraph 6, this respondent admits that it owns approximately the percentage of shares of various classes of capital stock of the companies shown in the table, but alleges that such percentage of ownership is not indicative of percentage of voting power, but that such percentage is stated approximately correctly, for companies other than American Gas & Electric Company, in the table referred to in paragraph 9 of the notice and order and attached thereto as "Exhibit A". The exact number of shares outstanding of each class of stock, the number of shares owned by Bond and Share, and the resulting percentages for each class and of aggregate voting power will be adduced upon the hearing held hereunder.

With respect to the statements of paragraph 7, Bond and Share challenges the relevance of the comparisons between consolidated assets and market values of voting securities

held by Bond and Share in the companies therein listed as of December 31, 1938, or subsequently, and denies that any such comparisons are material or relevant to any issue herein. Further answering, Bond and Share has no knowledge, information or belief sufficient to enable it to answer as to the market value of voting securities of the several companies held by it as of December 31, 1938, or as of any other date, and, therefore, denies the statements of market value of voting securities held by Bond and Share in the companies therein described. Bond and Share further alleges, if such comparisons be relevant, that market values of such voting securities have been and are subject to wide fluctuations, and that for a substantial period of its existence, a computation of market quotations of the voting securities held by it in said companies, based on actual sales but applied to the number of shares held, the aggregate far exceeded their book values as shown by consolidated assets, and that market values so computed established substantially higher ratios to consolidated assets.

9. American Power & Light Company (hereinafter called "American Company") admits, except as hereinafter denied or qualified, the allegations of Part II, paragraphs 10 to 19, inclusive, of the Commission's notice and order.

Referring to paragraph 12, the description of stocks of American Company issued and outstanding are in all respects subject to, and qualified by, the provisions of the statutes pursuant to which the same were authorized and issued and to the provisions of its charter, by-laws and other related corporate documents. Further referring to the allegations of paragraph 12, as to the unpaid cumulative dividends on preferred stock, and non-payment of dividends on common stock, since June 1, 1932, this respondent states that dividends were paid on preferred stock continuously since the first issue of such stock in 1909 at the rates provided by the by-laws and stock certificates until the year

1932, a period of 23 years. That since the year 1932 partial dividends have been paid in every year. That arrearages have accumulated because of business depression, increased taxes and other uncontrollable expenses of operating subsidiaries, and that within any reasonable period of general business prosperity arrearages would be eliminated.

With respect to the statement that no dividends have been paid on common stocks since June 1, 1932, this respondent states that such dividends were paid every year beginning with the year 1913 up to and including the year 1932, and that the suspension of such dividends has been due to the causes above stated.

Answering paragraph 14, this respondent states that Yakima Credit Corporation is not in fact controlled or operated as a subsidiary of either Bond and Share, American Company or Pacific Power & Light Company. Pacific Power & Light Company's position, with respect to such Yakima Credit Corporation, is merely that of a minority stockholder owning approximately an 11.23% interest in the voting securities.

Referring to paragraph 15, this respondent states that unpaid cumulative dividends in arrears on preferred stock of subsidiary companies consist of arrearages on preferred stock of Florida Power & Light Company and Portland Gas & Coke Company. That all the other public utility operating companies are paying full preferred dividends and have generally continued to pay such dividends. The unpaid dividends on preferred stock of Florida Power & Light Company are currently being reduced. As to Portland Gas & Coke Company, respondent American Company has recently subscribed for and purchased 6,000 additional shares of its common stock, the proceeds from which make possible the construction of new process by-products plants which give promise of a return such as will enable Portland Gas

& Coke Company to pay in full the arrearages on its preferred stock.

10. Pacific Power & Light Company (hereinafter called "Pacific Company") admits the allegations of paragraphs 17 to 19, inclusive, of Part II of the Commission's notice and order, subject to the qualification that as to paragraph 19, the description of stocks of Pacific Company issued and outstanding are in all respects subject to, and qualified by, the provisions of the statutes pursuant to which the same were authorized and issued and to the provisions of its charter, by-laws and other related corporate documents.

11. Electric Power & Light Corporation (hereinafter called "Electric Company") admits, except as hereinafter denied or qualified, the allegations of Part III, paragraphs 20 to 29, inclusive, of the Commission's notice and order.

Referring to paragraph 22, the description of stocks of Electric Company issued and outstanding are in all respects subject to, and qualified by, the provisions of the statutes pursuant to which the same were authorized and issued and to the provisions of its charter, by-laws and other related corporate documents. Further referring to paragraph 22, this respondent alleges that dividends on both preferred and second preferred stocks of Electric Company were paid regularly, continuously and in full from the organization of the company in 1925 until the middle of 1932. The discontinuance of such dividends since 1932 has been due to continuous business depression in areas served by subsidiary companies and to increases in taxes and other uncontrolable expenses of operating subsidiaries. It is hoped to resume at least partial dividends on preferred stock of Electric Company at an early date. Dividends were paid on common stock continuously from 1928 to the middle of 1932.

With respect to the allegations of paragraph 25, as to unpaid dividends on preferred stocks of subsidiary companies, Electric Company states that as of May 31, 1940 all

electric utility subsidiaries, except Utah Power & Light Company and Mississippi Power & Light Company, have made up all preferred stock dividend arrearages.

Of the $68,404,705.42 of unpaid cumulative dividends in arrears on preferred stocks of subsidiaries as of December 31, 1938, $6,961,107.42 represents such unpaid dividends on preferred stock of Utah Power & Light Company, and $11,564,173.92 on preferred stock and $42,317,193.33 on second preferred stock (all of which latter stock is owned by Electric Company) of United Gas Corporation.

The accumulated arrearages of dividends on preferred stock of Utah Power & Light Company have been due, in addition to the general conditions above stated of business depression and increased expense, to conditions peculiar to that company, viz. the low average rate of mining operations from 1930 to 1939, inclusive, in the territory served from which a large portion of the revenues of such company is obtained, and to an exceptional and almost continuous drought condition which has prevailed in the water shed upon which its principal hydro electric plants are dependent, resulting in the necessity of large purchases of power, increased cost of steam plant operation, and the use of current funds for the construction of additional steam plants which would not have been required had normal water conditions prevailed.

United Gas Corporation has, on a consolidated basis, in every year, save one, since the acquisition by Electric Company of its stock interest therein in 1930 earned its full preferred dividend and has shown substantial earnings applicable to second preferred dividends.

Because of its cash requirements in developments and extension of its facilities, and its inability, under conditions which have existed in recent years, to reimburse its treasury through ordinary financing free from burdensome restrictions, United Gas Corporation has not been able at all times

to make payments of such preferred dividends in full, and no second preferred dividends have been paid since April 1, 1932. However, since September 1, 1936, dividends on the $7 preferred stock were regularly paid at the full annual rate up to September 1, 1939 upon which date and quarterly thereafter, dividends have been paid at an annual rate of $9 per share, thus reducing accumulated arrearages.

12. Utah Power & Light Company (hereinafter called "Utah Company") admits, except as hereinafter denied or qualified, the allegations of paragraphs 27 to 29, inclusive, of the Commission's notice and order. With respect to the allegations of paragraph 29, as to cumulative preferred dividends in arrears, alleges that said Utah Company paid dividends continuously on its preferred stock from the dates of issue thereof, commencing in 1913 up to and including 1932. The suspension of such dividends has been due to the causes above alleged. Dividends were paid on common stock continuously from 1925 to 1932, inclusive. Referring further to paragraph 29, the description of stocks of Utah Company issued and outstanding are in all respects subject to, and qualified by, the provisions of the statutes pursuant to which the same were authorized and issued and to the provisions of its charter, by-laws and other related corporate documents.

13. National Power & Light Company (hereinafter called "National Company") admits, except as hereinafter denied or qualified, the allegations of Part IV, paragraphs 30 to 36, inclusive, of the Commission's notice and order.

Referring to paragraph 35, the description of stocks of National Company issued and outstanding are in all respects subject to, and qualified by, the provisions of the statutes pursuant to which the same were authorized and issued and to the provisions of its charter, by-laws and other related corporate documents. Further referring to the allegations of paragraph 35 as to unpaid cumulative

dividends in arrears on preferred stocks of subsidiary companies, this respondent states that as of this date such arrearages consist solely of arrearages on preferred stocks of Lehigh Valley Transit Company, substantially all of which are owned by National Company. All other arrearages have been made up.

14. No answer is made with respect to the allegations of Part V, paragraphs 37 to 42, inclusive, of said notice and order because American & Foreign Power Company Inc., while originally named as respondent in said notice and order, has been dismissed as a party to these proceedings by order of the Commission dated June 17, 1940 and filed herein as Commission's Exhibit No. 10.

15. No answer is made with respect to the allegations of Part VI, paragraph 43, of said notice and order because American Gas and Electric Company has not been made a party to this proceeding.

16. Ebasco Services Incorporated (hereinafter called "Ebasco") admits the allegations of Part VII, paragraph 44, of said notice and order, and alleges that services performed by it, as therein described, are rendered, as to domestic operating companies, at cost, and in all respects in accordance with the requirements of Section 13 of the Act, and it has filed with the Commission its application for approval of its service arrangements. Hearing has been had thereon but the Commission has not entered an order with respect to the same.

17. Each of the respondents hereto adopts, on information and belief, the admissions, denials and qualifications of the foregoing answer made by the other respondents, so far as answer by each may be appropriate to those parts and paragraphs of the notice and order not directly applicable to it.

18. Each of the respondents, jointly and severally, in an-

swer to Part IX, paragraphs 46 to 48, inclusive, of the Commission's notice and order:

Denies (paragraph 46) that the structure of the holding company system of Bond and Share is either unduly or unnecessarily complicated;

Denies (paragraph 47) that voting power is unfairly or inequitably distributed among security holders of the holding company system or of respondents, or any of them;

Admits (paragraph 48) that Bond and Share is a holding company with respect to certain subsidiary companies which themselves have subsidiary companies which are holding companies, but with respect thereto alleges that such condition exists only in relation to the situations described in paragraph 21 hereof.

19. Further answering paragraph 46, respondents state affirmatively that the holding company system of Bond and Share is simple and free from complications. This is evidenced by the chart attached to Commission's notice and order as Exhibit "A". Neither the corporate structure nor continued existence of any company in the system, unduly or unnecessarily complicates such structure, or unfairly or inequitably distributes voting power.

It has been and is the consistent policy in the Bond and Share System to consolidate operating companies in the same territory into single simple corporate structures, the securities of which consist almost uniformly of first mortgage bonds, preferred stock and common stock. Underlying or divisional mortgages have been refunded. Intermediate obligations between bonds and stock have been resorted to only in a few cases where required by some existing financial problem which could not be met by ordinary financing, and, in such cases, such intermediate obligations consist of relatively small issues of long term "debenture" notes or ordinary short term notes.

In carrying out this policy, on the completion of organiza-

tion and during the development and expansion of operating public utility subsidiaries, the existing operating electric utilities have merged, consolidated or acquired the properties of several thousand separate corporations. As an example, upon its organization in 1930, the United Gas Corporation group included approximately 50 companies. Since that date this number has been reduced to 10.

From 1928 to 1939, inclusive, the following intermediate holding companies were either liquidated or ceased to be holding companies within the definition of the Act: in the American Company system, Southwestern Power & Light Company, The Washington Water Power Company, Nebraska Power Company and The Montana Power Company; in the Electric Company System, Power Securities Corporation, Idaho Power Company, Louisiana Power & Light Company, Mississippi Power & Light Company, Dixie Gas and Utilities Company, Southern Gas Company, South Texas Gas Company, South Texas Pipe Line Company, Louisiana Gas & Fuel Company, Gas & By-Products Company, Moody Seagraves Gas Co., Inc., The Palmer Corporation of Louisiana, Northern Louisiana Gas Company, United Gas Corporation, United Gas Public Service Company and Houston Gulf Gas Company; in the National Company system Lehigh Power Securities Corporation, Pennsylvania Power & Light Company, Easton Consolidated Electric Company, Lehigh Valley Transit Company, Lancaster County Railway and Light Company, Valley Railways, Harrisburg Light and Power Company, Edison Electric Company and Lancaster Gas Light & Fuel Company.

Simplification of corporate structure is slow by reason of State and Federal laws, tax problems and other reasons. Further simplification is being pressed forward as fast as practicable.

20. Further answering paragraph 47, respondents affirmatively allege that voting power is fairly and equitably dis-

tributed among security holders. Each share of stock, common or preferred, is ordinarily entitled to a single vote. Exceptions are stated in the margin.* No company or class of stock has been artificially interposed to deflect voting power from its normal channels. On the original incorporation and distribution of stocks of companies in the system, voting power has been distributed among the security holders who have furnished the risk or equity capital or service involved in starting and continuing the company on its course, and however the voting power may have been distributed between the securities issued to the persons so furnishing capital or service, such distribution has been fixed in accordance with applicable laws and charter provisions and stated in the stock certificates, so that subsequent purchasers of any classes of securities were advised of and

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* Holders of the following securities outstanding with the public have limited voting rights:

Florida Power & Light Company
$7 Preferred Stock
Kansas Gas and Electric Company
$6 Preferred Stock
Pacific Power and Light Company
$6 Preferred Stock
The Washington Water Power Company
$6 Preferred Stock
Electric Power & Light Corporation
$7 Second Preferred Stock, Series A
United Gas Corporation
$7 Preferred Stock
Houston Gulf Gas Company
7% Preferred Stock, Series A
7% Preferred Stock, Series B
New Orleans Public Service Inc.
Preferred Stock
National Power & Light Company
$6 Preferred Stock
Birmingham Electric Company
$7 Preferred Stock
$6 Preferred Stock.

The $7 Second Preferred Stock of United Gas Corporation is entitled to three votes per share.

knew when they purchased their securities the voting power pertaining thereto, and the distribution of voting power among security holders. The distribution of voting power between the security holders has been a matter of private contract, fairly and equitably arrived at and fairly and equitably maintained.

While voting control is usually held by the common stock, this is the accepted and customary method of distributing voting power, and is essential to common stock financing. Since the common stock is only entitled to dividends after all debt obligations and preferred stock dividend requirements are met, the common stock must of necessity control the corporation to realize earnings and payment of dividends on such stock. If control were vested in creditors they would have no interest in the payment and little interest in earning of dividends for either preferred or common stock so long as their debt requirements were satisfied and similarly if control were vested in preferred stock-holders they would have no interest in the payment and little interest in the earnings of dividends on junior stocks.

21. Further answering paragraph 48, Pacific Company and Utah Company are the only subsidiary companies of subsidiary holding companies which are themselves holding companies within the definitions of the Act.

Pacific Company is primarily an operating utility. It is a holding company only by reason of its ownership of the stock of Inland Power & Light Company. Said latter company is a public utility operating in the same territory as Pacific Company.

Pacific Company, having previously received the approval of the Public Utility Commissions of the states of Washington and Oregon, filed on June 11, 1937, with the Federal Power Commission and application for approval of the acquisition of the physical properties of Inland Power & Light Company. The Federal Power Commission denied

such application by order issued on December 14, 1937. Pacific Company promptly appealed to the Circuit Court of Appeals for the Ninth Circuit from such order of denial, and, thereupon, the Federal Power Commission moved to dismiss said appeal. Said motion was denied by the Circuit Court of Appeals by order dated September 6, 1938. The Federal Power Commission sought and obtained a review of said order of the Circuit Court of Appeals on certiorari to the Supreme Court of the United States, where said order was affirmed by decision dated April 17, 1939. The Circuit Court of Appeals has recently, on May 8, 1940, rendered its decision and entered its order reversing the order of the Federal Power Commission, and returning the matter to the Commission for further consideration in harmony with its said decision. Pacific Company proposes to diligently prosecute the proceedings before the Federal Power Commission, and upon the entry of an appropriate order by the Federal Power Commission granting its application, and the satisfaction of any other legal requirements, Pacific Company will cease to be a holding company.

Utah Company is primarily an operating public utility. It is a holding company only by reason of its ownership of the stocks of Utah Light & Traction Company and The Western Colorado Power Company, public utilities in the same or contiguous territory to that served by Utah Company.

Utah Company has had under consideration for many months last past a plan for the acquisition of the public utility properties of both Utah Light & Traction Company and The Western Colorado Power Company. Said plan has been completed in tentative form and submitted to counsel for consideration and approval as to the legal steps and formalities, and upon its approval by counsel will be promptly submitted to the requisite governmental authori-

ties having jurisdiction, including this Commission. Upon approval by such governmental authorities, Utah Company will cease to be a holding company.

Part III.

For a second defense:

22. Electric Bond and Share Company ("Bond and Share") is a New York corporation having its principal place of business at Two Rector Street, New York, N. Y. At no time has it qualified to do business as a foreign corporation in any other state.

23. Bond and Share has no funded debt and no floating or current liabilities other than current tax accruals and current operating expense, such current liabilities amounting to a small fraction of current assets. Its presently outstanding capital stock consists of the following:

Class	No. of Shares Outstanding
$6 Preferred Stock	1,155,655
$5 Preferred Stock	300,000
Common Stock	5,250,358

Each share of stock is entitled to one vote.

24. Bond and Share as of May 31, 1940 owned the following voting securities of American Gas and Electric Company ("American Gas"), American Power & Light Company ("American Company"), National Power & Light Company ("National Company"), Electric Power & Light Corporation ("Electric Company"), United Gas Corporation ("United Company"), and American & Foreign Power Company Inc. ("Foreign Company") which represented the following percentages of the total outstanding voting securities of each of said companies:

Company and Class of Stock	No. of Shares Held	Percentage of Outstanding Voting Securities
American Gas		
Common Stock	846,985	17.51%
American Company		
$5 Preferred Stock	51,840	20.70%
Common Stock	937,221	
National Company		
Common Stock	2,540,450	46.56%
Electric Company		
$7 Preferred Stock	485	46.85%
Common Stock	1,976,638	
United Company		
Common Stock	752,666	7.19%
Foreign Company		
Common Stock	881,500	42.30%

25. Bond and Share owns all the outstanding capital stock of Ebasco Services Incorporated ("Ebasco") which furnishes technical and specialized services to subsidiaries of respondents. Said services are economically and efficiently performed and as to domestic operating companies are rendered at cost, conforming to the requirements of Section 13 of the Act, and are essential to efficiency and economy of operation of the public utility subsidiaries in the Bond and Share System, and to the successful functioning of said System.

Bond and Share owns no voting securities of any of the other respondents, or their subsidiaries, other than those hereinabove set forth. It does, however, own non-voting securities of certain of the respondents and their subsidiaries.

26. American Gas is a New York corporation, having its principal place of business at 30 Church Street, New York, N. Y. The presently outstanding securities of American Gas consist of the following:

Sinking Fund 2¾% Debentures, Series due January 1, 1950, $8,000,000.

Sinking Fund 3½% Debentures, Series due January 1, 1960, $10,000,000.

Sinking Fund 3¾% Debentures, Series due January 1, 1970, $12,000,000.

4¾% Cumulative Preferred Stock, Par Value $100, 355,623 shares.

Common Stock, Par Value $104,482,737 shares.

Further answer to allegations of the notice and order with respect to American Gas and its subsidiaries is not made at this time for the reason that American Gas is not made a respondent by the notice and order.

27. American Company is a Maine corporation having executive offices at Two Rector Street, New York, N. Y. It has at no time qualified to do business as a foreign corporation in any state.

28. The presently outstanding securities of American Company consist of the following:

Gold debenture bonds, American 6% series, due March 1, 2016	$42,358,000	
6% Gold debenture bonds, series A. due March 1, 2022, of Southwestern Power & Light Company (assumed by American Company)	$3,903,000	
$6 Preferred Stock	793,581	2/10 shares
$5 Preferred Stock	978,444	shares
Common Stock	3,008,511	27/50 shares

29. American Company owns outstanding voting securities of the following utility companies representing the per-

centages of the total outstanding voting securities of such companies set opposite their respective names:

Central Arizona Light and Power Company	98.04%
Florida Power & Light Company	100.00%
Kansas Gas and Electric Company	90.55%
Minnesota Power & Light Company	93.04%
The Montana Power Company	93.73%
Nebraska Power Company	89.90%
New Mexico Electric Service Company	99.99%
Northern Power Company	98.80%
Northwestern Electric Company	67.65%
Pacific Power & Light Company which Company owns in turn 99.95% of the voting securities of Inland Power & Light Company.	94.66%
Portland Gas & Coke Company	83.23%
Superior Water, Light and Power Company	66.58%
Texas Electric Service Company	98.97%
Texas Power & Light Company	96.77%
Texas Public Utilities Corporation	99.98%
The Washington Water Power Company	99.69%

30. In addition to voting securities of the companies named in paragraph 29 hereof, American Company, or its subsidiaries, own all or substantial blocks of the outstanding voting securities of certain non-utility companies, which are generally described in Part II of the notice and order, paragraph 14 as well as of certain inactive companies not named therein.

31. Electric Company is a Maine corporation having executive offices at Two Rector Street, New York, N. Y. It has at no time qualified to do business as a foreign corporation in any State.

32. The presently outstanding securities of Electric Company consist of the following:

Gold Debentures, 5% Series, due February 1, 2030	$31,000,000	
Collateral Trust Gold Bonds, American 6% Series, due June 1, 1949 of Power Securities Corporation (assumed by Electric Company)	$ 971,225.07	
$7 Preferred Stock	514,162	shares
$6 Preferred Stock	255,427	shares
Second Preferred Stock, Series A	78,164	shares
Common Stock	3,440,387	shares

33. Electric Company owns outstanding voting securities of the following utility companies representing the percentages of the total outstanding voting securities of such companies set opposite their respective names:

Arkansas Power & Light Company	90.22%
Dallas Power & Light Company	70.00%
Idaho Power Company	71.76%
Louisiana Power & Light Company	95.43%
Mississippi Power & Light Company	94.03%
New Orleans Public Service Inc.	95.14%
United Gas Corporation	61.58%
Utah Power & Light Company	92.39%

which Company owns in turn all of the voting securities, other than directors' qualifying shares, of

Utah Light and Traction Company and
The Western Colorado Power Company

34. In addition to voting securities of the companies named in paragraph 33 hereof, Electric Company, or its subsidiaries, own all or substantial blocks of the outstanding voting securities of certain non-utility companies, which are generally described in Part III of the notice and order, paragraph 24.

35. National Company is a New Jersey corporation having executive offices at Two Rector Street, New York, N. Y. It has at no time qualified to do business as a foreign corporation in any State.

36. The presently outstanding securities of National Company consist of the following:

Six Per Cent. Gold Debentures, Series A, due August 1, 2026	$8,775,000
Five Per Cent. Gold Debentures, Series B, due May 1, 2030	$8,959,000
Lancaster County Railway and Light Company, Fifty-Year Five Per Cent. Collateral Trust Mortgage Gold Bonds, due July 1, 1951	$ 370,500
$6 Preferred Stock	279,716 shares
Common Stock	5,456,117 shares

37. National Company owns outstanding voting securities of the following utility companies representing the percentages of the total outstanding voting securities of such companies set opposite their respective names:

Birmingham Electric Company	100.00%
Carolina Power & Light Company	93.53%
The Edison Illuminating Company of Easton	100.00%
Houston Lighting & Power Company	91.32%
Lehigh Valley Transit Company	98.17%
Memphis Generating Company	100.00%
Pennsylvania Power & Light Company	75.63%
Roanoke River Power Company	100.00%
West Tennessee Gas Company	100.00%

38. In addition to the voting securities of the companies

named in paragraph 37 hereof, National Company, or its subsidiaries, own all or substantial blocks of the outstanding voting securities of certain non-utility companies, which are generally described in Part IV of the notice and order, paragraph 34.

39. Pacific Power & Light Company, described in the notice and order as a holding company, is a Maine corporation qualified to do business in the State of Oregon and the adjacent State of Washington, in which States it operates primarily as a public utility. Its principal office for the transaction of business is located in Portland, Oregon.

40. The presently outstanding securities of Pacific Power & Light Company consist of the following:

First Mortgage and Prior Lien Gold Bonds, 5% Series, due 1955	$20,500,000
7% Preferred Stock	58,100 shares
$6 Preferred Stock	10,585 shares
Common Stock	1,000,000 shares

In addition, American Company holds note indebtedness of Pacific Power & Light Company in the amount of $2,794,500.

41. Pacific Power & Light Company is only incidentally a holding company by reason of its ownership of all of the stock, except directors' qualifying shares, of Inland Power & Light Company, which operates in the same territory.

42. Utah Power & Light Company, described in the notice and order as a holding company, is a Maine corporation qualified to do business in the State of Utah and the adjacent States of Idaho and Wyoming, in which States it operates primarily as a public utility. Its principal office for the transaction of business is located in Salt Lake City, Utah.

43. The presently outstanding securities of Utah Power & Light Company consist of the following:

Thirty Year First Mortgage Five Per Cent. Gold Bonds due 1944	$29,373,000	
First Lien and General Mortgage Gold Bonds, Series of "4½s due 1944"	$ 4,234,000	
Six Per Cent. Gold Debenture Bonds, Series A, due 2022	$ 5,000,000	
$6 Preferred Stock	41,921	shares
$7 Preferred Stock	207,605	shares
Common Stock	3,000,000	shares

Utah Power & Light Company is guarantor of the payment of the principal of and interest on $12,183,000 principal amount of Thirty-Year First and Refunding Mortgage Gold Bonds, Series A, 5%, due 1944, of Utah Light and Traction Company.

44. Utah Power & Light Company is only incidentally a holding company by reason of its ownership of all of the stock, except directors' qualifying shares, of Utah Light and Traction Company, whose properties are located in the same territory, and of The Western Colorado Power Company, which owns and operates public utility properties in western Colorado.

45. All securities issued by Bond and Share and the other respondents hereto, and all securities issued by the subsidiaries of any of said respondents, were lawfully created and issued in accordance with the applicable laws of the states of incorporation of said respondents and their subsidiaries, respectively, and as authorized or permitted by the laws of the states in which such respondents and their subsidiaries are doing business, if in different states than those of incorporation, and also in accordance with lawfully adopted and applicable provisions of charters, certificates of organization and/or by-laws of said companies respec-

tively. By said charters, certificates, by-laws, or other appropriate corporate documents, the voting powers of the respective classes of securities were fixed and determined, and the securities, when issued and sold, carried with them the voting rights which they now carry (except to the extent that the same have been modified by corporate action, including stockholders' vote, duly taken in accordance with charter and statutory provisions), and such securities were delivered for property or sold for cash, with such voting rights attached and with knowledge of the recipient or purchaser of the voting rights and resulting distribution of voting power. All security issues of respondents and, with few exceptions, all security issues of their subsidiaries, were issued and voting rights established prior to the enactment of the Public Utility Holding Company Act of 1935, and the voting and other rights appertaining to such securities were at the time of the enactment of said Act valid, existing and outstanding contract and property rights. In no case were such securities issued, distributed or acquired in violation of any law, federal or state, and the titles and rights held and exercised by Bond and Share and the other respondents and other stockholders in respect thereto are valid, legal, existing property rights of which they may not be deprived (unless taken for other public use with just compensation, as required by Article V of the amendments to the Constitution of the United States), and any involuntary impairment or violation of any of respondents', or any other stockholder's, vote, or other titles or rights thereunder, would be without due process of law, in violation of said Article V of the amendments to the Constitution of the United States.

46. Neither Bond and Share nor the other holding company respondents (other than Pacific Company and Utah Company) are themselves engaged in interstate or foreign commerce nor in any transactions affecting interstate or foreign commerce. In so far as any one of them may be

subject to federal regulation, it is so subject by reason of interstate commerce done by direct or indirect "subsidiaries", as defined by the Act and not by reason of any business done by it in its own corporate capacity. All public utility subsidiaries are engaged primarily in intrastate public utility business within the states in which they respectively operate, and such of them as are engaged in interstate commerce are so engaged only incidentally to their intrastate public utility business. Non-utility subsidiaries, with few exceptions, are engaged solely in intrastate business within the states in which they respectively operate. Neither Bond and Share nor any of the other respondents control, obstruct, impede or in anywise affect the interstate or foreign commerce done by said subsidiaries, nor does the present corporate existence or structure, or the present distribution of voting power, of any company in the system, affect such interstate or foreign commerce or any other matter of federal jurisdiction.

Part IV.

For a further defense:

47. Section 11(b) of the Act directs that any order of the Commission thereunder shall be made "as soon as practicable" after January 1, 1938, and by Section 11(c) such order is required to be complied with "within one year from the date of such order" subject to power of the Commission to extend said date for not to exceed one year. In view of the provisions throughout the Act making the public interest and the protection of investors and consumers the guiding principle for its interpretation and application, an order of the Commission under Section 11(b)(2) should not be made at such time or in such manner as to prejudice the interest of investors, consumers, or the public.

48. It is not practicable at the present time or under present conditions to enforce application of Section 11(b)(2)

with respect to the Bond and Share System or its component parts or to conduct hearings looking to application of said section to companies in said System.

49. The problem of collecting and correlating information and conducting a hearing is now complicated in a manner and to an extent not heretofore contemplated by the urgent demands on the staffs of respondents and their subsidiaries in connection with problems concerning the national defense. It is of vital public concern that operating companies in the System prepare themselves for all foreseeable eventualities which may locally arise in regard thereto. A number of executives and others who will be required as witnesses in connection with this proceeding, or whose time, in part at least, is required in the preparation for hearing, are specially qualified to give attention now to the studies and other work which utilities are doing and should continue to do in connection with local preparations for the national defense. It is not in the public interest or in the interest of the companies, consumers or security holders of the Bond and Share System, that this work should in any way be hampered or delayed as may be the case if respondents are required to prepare for and participate in an early hearing in this proceeding.

50. Holding companies in the Bond and Share System were particularly effective in maintaining adequate utility service and providing necessary financial support to operating companies during the last World War, and American Company, Electric Company, National Company and Bond and Share can and will, if allowed to continue in existence unhampered by the necessity of devoting the major portion of the time of their executives to extraneous matter, function with similar effectiveness in connection with the national preparedness program or any other national emergency which may eventuate. It is in the public interest and the interest of investors and consumers that the continued

existence of these companies should not be disturbed during the present national emergency.

51. Due to the present World War, financial and money markets are in an unsettled and disturbed condition; several sales of securities have already been postponed and the issuance of any order under Section 11(b)(2), which might necessitate financing or require or make desirable the sale or distribution of stocks or other securities at this time, would entail great loss to investors and might not be possible of accomplishment, nor would it be in the interest of investors, consumers or the public.

52. In connection with subsidiary operating public utility companies, their financial condition has been strengthened and improved by reason of their status in the Bond and Share System. Dividend arrearages on the preferred stock accumulated through the depths of the depression have been eliminated in most cases, and are being rapidly made up in others. The values of their securities are appreciating, with resultant appreciation in the value of holding company securities. Further refunding and refinancing projects are under consideration which will further strengthen and improve the condition of respondents and of the operating companies in the System, and whatever action should be taken eventually by the Commission pursuant to Section 11(b)(2) should be deferred until the investors in the securities of said companies may realize the maximum values which their investments might be expected to attain under normal conditions.

53. Pursuant to formal request of the then Chairman of the Commission, dated August 3, 1938, Bond and Share on November 30, 1938 filed with the Commission a document entitled "Integration of Electric Operating Utilities of the Electric Bond and Share Company System" embodying a tentative Plan of Integration of the electric properties in

said system, including as part thereof subsidiary electric companies of American Gas and Electric Company. Said document was re-filed with the Commission on April 3, 1940 in the companion proceeding (File No. 59-3) to this proceeding, and is hereby incorporated herein by reference. On or about November 30, 1938, or shortly thereafter, the respondents hereto American Company, National Company and Electric Company likewise filed with the Commission separate tentative Plans of Integration pursuant to said request of Chairman William O. Douglas, adopting in principle and supplementing the said tentative Plan of Bond and Share. Said documents are likewise by reference made part hereof. Respondents propose further to present and support in this proceeding a report supplementing the said tentative Plans and filings. Respondents state that said tentative Plans as originally filed and as supplemented by said report demonstrate that respondents American Company, Electric Company and National Company, as well as other companies in the system, are essential agencies in accomplishment of any plan of integration of the properties of the operating utilities in the Bond and Share system and to any constructive solution of the problem of integrating and simplifying the corporate structure of the properties in such system, and that any order made at this time in this proceeding looking to the dissolution or termination of the corporate existence of any of the respondents would be destructive of said system and of the systems of respondents, and would prevent the accomplishment of either said tentative Plans of Integration or of any workable and constructive plan for the integration of said public utility properties in the interests of investors and consumers.

Wherefore respondents pray that the Commission withdraw its said notice and order, or enter an order dismissing this proceeding, and/or after due notice and opportunity for

hearing and presentation of evidence, grant such other and further relief in the premises as may be just and proper.

Dated, September 9, 1940.

SIMPSON THACHER & BARTLETT,
by JOHN F. MACLANE,
A member of said firm,
Office and Post Office Address,
No. 120 Broadway, New York, N.Y.

REID & PRIEST,
by FRANK A. REID,
A member of said firm,
Office and Post Office Address,
No. Two Rector Street, New York, N. Y.
Attorneys for Respondents.

[DOCUMENT No. 79.]

Copy Filed 12-6-41 59-12 1st

Simpson Thacher & Bartlett
120 Broadway New York

December 5,1941

Securities and Exchange Commission, 1778 Pennsylvania Avenue, Washington, D. C.

Dear Sirs,

American Power & Light Company has filed with the Commission a motion to consolidate the hearing upon the Plan filed by American Power & Light Company pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935, File No. 54-37, with any further hearings as to American Power & Light Company under the pending Notice and Order under Section 11(b)(2) of said Act, File 59-12.

If counsel for the Commission decides to oppose granting this motion, American Power & Light Company hereby re-

spectfully requests that the Commission order oral argument on said motion and fix a time for filing briefs or memoranda upon said motion.

Very truly yours,

SIMPSON THACHER & BARTLETT,
By JOHN F. MACLANE.

REID & PRIEST,
By FRANK A. REID.

[DOCUMENT No. 80.]

59-12 1st

UNITED STATES OF AMERICA

Before the Securities and Exchange Commission

In the Matter of
American Power & Light Company, Applicant.
File No. 54-37

In the Matter of
Electric Bond and Share Company,
American Power & Light Company,
Pacific Power & Light Company,
Electric Power & Light Corporation,
Utah Power & Light Company,
National Power & Light Company,
Ebasco Services Incorporated,
Respondents.
File No. 59-12

MOTION TO CONSOLIDATE.

December 6, 1941.

The above named American Power & Light Company (hereinafter called "American"), the applicant in the above proceeding File No. 54-37 and one of the respondents in the above entitled proceeding File No. 59-12, moves to consoli-

date the above entitled proceedings in so far as said proceeding File No. 59-12 relates to American and to hold joint hearings in said proceedings and in support of said motion shows:

1. On or about February 28, 1940, a proceeding was instituted by the Commission entitled "In the Matter of Electric Bond and Share Company and its subsidiary companies, respondents, File No. 59-3" by the issue of a "Notice of and Order for hearing pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935". By said notice and order it was charged (Paragraph 136) that the holding company system of Electric Bond and Share Company is not confined in its operations to that of a single integrated public utility system within the meaning of the Act and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system.

By the allegations of such notice and order and by the terms of the order, the holding company systems of American and the other respondents in said proceeding were brought under review and each of said respondents was permitted to include in its answer its claim as to the action which should be required to be taken by any of them to limit its operations so as to meet the requirements of Section 11(b)(1) of the said Act.

Aside from certain motions and the filing of the answer by respondents (including American) no hearings have been had or further action taken by the Commission under said File No. 59-3.

2. On or about May 9, 1940, the Commission instituted a proceeding against Electric Bond and Share Company and American and other companies in the Electric Bond and Share Company system entitled "In the Matter of Electric Bond and Share Company" et al "File No. 59-12" by "Notice of and Order for hearing pursuant to Section 11

(b)(2) of the Public Utility Holding Company Act of 1935" in which it was charged (Paragraphs 46-47) that "the structure of the holding company system of Electric Bond and Share Company is unduly and unnecessarily complicated", and "voting power is unfairly and inequitably distributed among security holders of said system of said Electric Bond and Share Company".

After certain motions and proceedings not here material, the Commission on June 7, 1940, issued an order limiting the proceeding initially "to the issue of whether it is necessary to discontinue the existence of American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American & Foreign Power Company Inc., or any of them, in order to insure that the structure of the holding company system of the Electric Bond and Share Company shall not be unduly or unnecessarily complicated and that voting power shall not be unfairly or inequitably distributed among security holders of such system." By subsequent order dated June 17, 1940, the proceeding was dismissed as to American & Foreign Power Company Inc.

3. Thereafter, commencing on June 18, 1940, and subject to various adjournments, from time to time, hearings have been had before an examiner of the Commission under said notice and order (File No. 59-121) as limited by said order of June 7, 1940, and later order, to the above mentioned issues as stated pertaining to American and other of the respondents, and said hearings are still continuing.

4 Rulings of the Commission with respect to other registered holding companies indicate that American's capitalization must be readjusted in order to comply with Section 11(b)(2) and that American will be required to divest itself of certain of its holdings in order to comply with the provisions of Section 11(b)(1).

5. American has prepared and filed with the Commission

(File No. 54-37) its application under Section 11(e) of the Public Utility Holding Company Act of 1935 for approval of a plan to enable said company to comply with Subsection (b) of Section 11 of said Act. In brief, the Plan proposes, in order to comply with Section 11(b)(2) of the Act, that the corporate structure of American be simplified by the reclassification of its capital stock into a single class of stock with each share having identical rights as to dividends and other distributions and as to voting, and further proposes, in order to comply with Section 11(b)(1) of the Act, that the operations of American be confined to a single integrated public utility system, to be elected by American, with an additional system satisfying the requirements of said Section 11(b)(1). A copy of said Application and Plan is attached hereto as Exhibit A.

6. American believes that it would be in the public interest and in the interest of investors and consumers to consolidate the above entitled proceedings (File No. 54-37 and File No. 59-12) and to continue the present hearings under File No. 59-12 so far as they relate to American in conjunction with the hearings on the Plan proposed by American (File No. 54-37). Such proceedings involve common questions of law and fact and to continue them with joint hearings would be conducive to orderly procedure and economy of effort and expense and would expedite the ultimate disposal of the questions involved in both proceedings.

7. The matter at issue in the proceeding under Section 11(b)(1) of the Public Utility Holding Company Act of 1935 (File No. 59-3) in so far as American is concerned, is the action required to be taken by it to limit its operations so as to meet the requirements of a single integrated public utility system and additional systems imposed by Section 11(b)(1) of the Act. The Plan proposes to meet the objectives and requirements of said Section 11(b)(1) by electing ultimately a single integrated system, and an additional sys-

tem satisfying the requirements of Paragraphs "A", "B" and "C" of said Section 11(b)(1), and by disposing of the other systems not elected to be retained. Effectuation of the Plan will, therefore, dispense with any necessity of independent consideration of or hearing under said File No. 59-3 so far as concerns the American system.

8. The matter presently at issue in the proceeding under Section 11(b)(2) of the Act (File No. 59-12), as limited by the order of the Commission, dated June 7, 1940, as above mentioned, in so far as American is concerned, is whether or not the existence of American should be discontinued to insure that the structure of holding company system of Electric Bond and Share Company shall not be unduly or unnecessarily complicated and the voting power shall not be unfairly or inequitably distributed among security holders of such system. The Plan submitted by American pursuant to Section 11(e) of the Act (File No. 54-37) proposes compliance by American with said Section 11(b)(2) by reclassification of all its capital stock, including all classes of preferred stock and arrearages, and common stock into a single class of stock. The resulting capital structure of American will conform to all standards of the Act and no further question of complex corporate structure or unfair distribution of voting power will remain as to American. The present position of Electric Bond and Share Company as a stockholder of American and the extent of its voting influence in the newly created capital structure will be so altered under the proposed new capital structure as either to solve all questions of corporate simplification and voting control posed by the present notice and order as limited by the said order of June 7, 1940, or such questions will be so clarified as to simplify their solution.

9. Further continuance of the present proceeding File No. 59-12 as at present conducted and upon the issues presently pending without regard to or consideration of the

Plan, can result as to American only in an order dismissing such proceeding or in an order for the dissolution of American. Either order would leave unsolved the problems presented by Section 11(b) of the Act. American as a registered holding company is entitled under Section 11(e) of the Act to present and have considered such a Plan as it has proposed for compliance with Section 11(b). An order of dissolution pending the consideration of the Plan and determination of whether it is fair and equitable would be inconsistent with the Plan and would deny to American and its security holders the rights and protection expressly given them by Section 11(e) of the Act. Such an order would also result in the sacrifice of the interests of the security holders of American by requiring disposal of its holdings under present unsettled world and domestic conditions and the resulting depressed markets.

10. This motion is based upon the statements herein, the Plan and Application for its approval pursuant to Section 11(e) of the Act (File No. 54-37), and upon the record, including pleadings and exhibits, in the 11(b)(1) and 11(b)(2) proceedings File Nos. 59-3, 59-12, and American requests leave to refer to the same in support hereof.

Wherefore American Power & Light Company respectfully requests the Commission to make an appropriate order consolidating the hearing upon the Plan herein described (File No. 54-37) with any further hearings relating to American under the pending notice and order issued under Section 11(b)(2) of the Act (File No. 59-12) and also permitting counsel for the Commission and counsel for American, upon motion, to incorporate by reference as a part of the proceeding as to the Plan (File No. 54-37) any specified portions of the testimony and exhibits heretofore introduced in the aforesaid proceeding (File No. 59-12) which are relevant to the said hearing upon the Plan so that the same may

constitute a part of the record upon which the Commission shall base any order or orders relating to the Plan.

Respectfully submitted,

SIMPSON THACHER & BARTLETT,
by JOHN F. MACLANE

REID & PRIEST,
by FRANK A. REID.

Dated, December 6, 1941.